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**EFFECTS OF NULLIFICATION INSTRUCTION AND TESTIMONY
TYPE ON MOCK JURORS' DECISIONS**

WILLIAM H. MOORE, B.A.

**A thesis submitted to the Faculty of Graduate Studies and Research
in partial fulfilment of the requirements for the degree of
Master of Arts**

DEPARTMENT OF PSYCHOLOGY

CARLETON UNIVERSITY

AUGUST 1995

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**EFFECTS OF NULLIFICATION INSTRUCTION AND TESTIMONY
TYPE ON MOCK JURORS' DECISIONS**

**Submitted by William H. Moore, B.A.
in partial fulfilment of the requirements for
the degree of Master of Arts**

Thesis Supervisor

Chair, Department of Psychology

CARLETON UNIVERSITY

January 5, 1996

Abstract

This study assessed the effects of nullification instructions on the verdicts of mock jurors in a simulated sexual assault trial. Juries were presented with a videotaped simulation of a court trial and then deliberated to a verdict of innocence or guilt. Juries received either Explicit Nullification Instructions, which outlined their nullification power, or Standard Pattern Instructions, and viewed either conflicting or concurring testimonies in the simulated trial. It was hypothesized that the introduction of conflicting testimonies would reveal the effects of nullification instructions which were not found in the previous study by Spanos et al. (1993). Subsequently, it was hypothesized that the conflicting testimonies would result in more not guilty verdicts than the concurring testimonies. The results showed that nullification instructions had no effect upon the overall jury verdicts. Significant main effects were found for the testimony manipulations which suggests that conflicting testimonies result in more not guilty verdicts.

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INTRODUCTION

Some legal scholars have argued that jurors should be specifically instructed that they can deviate from the law if it seems justified. They claim that the jury's role is to act as the conscience of the community and that juries should be able to acquit legally guilty but morally correct defendants (Hans and Vidmar, 1986). Jury nullification involves the acquittal by the jury of a defendant even though the facts of the case show that the law has been violated (Tavris, 1983). The inherent power of the jury to nullify the law when deciding a case has been a cause of concern for centuries. This power to disregard the law was envisioned by some to be an invitation to anarchy (Horowitz and Willging, 1991). Scott (1989) felt that giving juries a right to nullify would be equivalent to sedition in a democratic system.

"Juries do not give reasons for their verdicts. Neither the Crown nor the accused knows why they decided the way they did. If the trial was with a judge sitting alone, reasons would be given. Published reasons help the law to grow. The decision of guilt or innocence is then more readily understood by the parties and the public" (Bouck, 1990).

Proponents of the right to nullification argue, however, that it provides juries with the opportunity to have influence in situations where the laws are disliked or the penalties are not warranted by the crime (Tavris, 1983).

"There are enough cases where the facts in a particular instance suggests a transgression of the law but justice points the other way. Since a judge is sworn to uphold the law, he or she must follow the law, although it may lead to an injustice. But a jury may decide the course of justice is the right way. In many instances that verdict will

be applauded, since laws by themselves are sometimes imperfect" (Bouck, 1990).

By charging juries as judges of law as well as fact, defendants may be protected from convictions which do not reflect the feelings of the community (McCall, 1985).

This paper will first examine the history of nullification as it relates to British, American and Canadian law. Second, the empirical research surrounding the nullification debate will be examined. Finally, an experiment will be presented which examines the effects of nullification instructions in a sexual assault trial where the testimonies of the defendant and complainant either conflict or concur.

A Brief History

The potential for jury nullification has always existed but juries are not always legally entitled to use it. The "power" to nullify law exists because there are no effective checks upon the jury's decision to return a verdict of acquittal in a criminal case (Jacobsohn, 1977). In the past, juries were held accountable for their decisions and jurors could sometimes face prosecution and imprisonment if their decisions did not reflect the feelings of the court. The decision in the Bushell case in England in 1670 changed this and paved the way for juries to be autonomous in their decisions without fear of reprisal (Horowitz and Willging, 1991). The trial judge in this case fined and jailed the jury for contempt when they acquitted the defendants in defiance of the judge's instructions. Chief Justice Vaughan released the jury and ruled that juries could never be punished for their verdicts (Weinberg-Brodt, 1990). This case

authenticated the jury's ability to engage in nullification and allowed juries to take a greater role in the trial process.

In the years following the Bushell case, there occurred a division of power within the English courts (Scott, 1989). Judges were held responsible for determining the law and instructing the juries while juries were held responsible for ascertaining the facts and applying the law to those facts. Any discrepancies between the judge and jury were seen as worthwhile indicators of difficulties in the legal system.

The debate over jury nullification continued in the United States. In 1735, this system was put to the test in the trial of John Peter Zenger. In this case, Zenger, a New York printer, was charged with criminal sedition for publishing materials without the authorization of the British mayor. The acquittal of the defendant despite his guilt under the letter of the law increased the power of the jury. This decision consolidated the role of jury nullifications as a source of justice and legal reform (Scott, 1989).

During the 19th century, juries in both England and the United States continued to be viewed as the rulers of law as well as fact. At a time when defendants often appeared before the bench without representation, jury nullification provided a balance of power. Decisions were to be based upon the moral and ethical standards of the community and as a result jurors were not compelled to accept the judge's view of the law ("The Changing Role", 1964). Jurors were assumed to be capable of arriving at decisions based upon their knowledge of "natural law".

Towards the end of the 19th century, opinion in the United States regarding the use of nullification by juries began to change. The courts began to rule that juries do

not have the "legal right" to decide the law in criminal cases. Judges began to inform jurors that they were responsible for determining the facts, but that they were obliged to follow the law as stated by the court (Jacobsohn, 1977). There was a general agreement that the average person could not properly weigh the complicated legal arguments of the lawyers and the role of the jury was subsequently reduced ("The Changing Role", 1964). Perhaps the best example of this change in attitude can be found in the case of Sparf and Hansen v. the United States (1895). The United States Supreme Court decided that it is the role of the jury to return a verdict based upon the evidence and, as a result, the defendant may not offer nullification instructions as a defense. This decision eliminated the jury's "right" to determine the law in the United States and resulted in it being responsible for simply applying the law, as given by the court, to the facts ("The Changing Role", 1964).

The opinion in the United States that juries have the power but not the "right" to nullify has prevailed in common-law jurisdictions throughout the 20th century. The case of United States v. Dougherty (1972) provides an example. Nine members of the Catholic clergy broke into and vandalized the offices of Dow Chemical to protest the production of napalm by the United States in the Viet Nam War. The defense in this case requested a jury nullification instruction and were refused. The appeal court judges felt that juries were aware of their powers and, therefore, the decision of the trial court to reject the defence's request for nullification instructions was upheld (Horowitz and Willging, 1991). The importance of this judgment is that it removes from the court all responsibility for informing the jury of their power for nullification.

This position presumes that the equilibrium between the rights of the defendant and society will be endangered by the erroneous use of jury nullification (Weinberg-Brodt, 1990).

The rationality behind the judiciary's need to protect the jury from its power to nullify was displayed in the United States in 1992. The riots which resulted from the acquittal of Rodney King's assailants are a prime example of the difficulty found in balancing the rights of society and the defendant. It would appear that, despite the overwhelming evidence against the defendants, the jury chose to nullify (Lacayo, 1992). This is perhaps the best example of the potential negative effect of a jury's "right" to nullification.

At present, juries in the United States are almost universally accepted as the finders of fact only. Although the majority of jurisdictions, both state and federal, reject the use of nullification instructions there are some exceptions. The states of Maryland and Indiana use a pattern nullification instruction, Pennsylvania allows nullification instructions upon the request of the defence but will otherwise not offer them, and courts in Georgia and Kansas acknowledge the power of juries to nullify but do not specifically instruct them about this power.

Nullification in Canada

The potential for jury nullification in Canada is perhaps best outlined in the case of R. v. Morgentaler. During the initial trial, the defense counsel outlined to the

jury their power to acquit the defendant despite the facts of the case if they considered abortion provisions of the Criminal Code to be bad law. Huscroft (1988) summarizes the judicial response to this:

"His argument is seen as subversive of the judicial process, and is variously repudiated as 'a direct attack on the role and authority of the trial judge' (p.76), a practice which could 'undermine and place at risk the whole jury system' (p.96), and as having 'potentially frightening implications' (p.36)."

Despite the trial judge's attempt to correct this "misstatement of justice", the jury still returned a verdict of not guilty. Upon appeal, the Supreme Court of Canada responded by stating that the jury has the power, but not the "right", to nullify the law. Simply stated, the pervasive ideal is that if a decision to nullify is made "it will be rendered by a uninformed jury, a jury willing to disregard both the instructions of a trial judge and its oath to duty" (Huscroft, 1988). "Defence counsel was, therefore, "wrong" to tell the jury that it could refuse to convict only in the sense that he had no "right" to tell them, and they had no "right" to know" (Huscroft, 1988).

The nullification debate takes on a clearly different aspect in Canadian law. Unlike their counterparts in the United States or United Kingdom, Canadian prosecutors have the right to appeal an acquittal on legal grounds.

"In indictable matters, Crown may appeal against acquittal on questions of law alone. Such provisions not violating constitutional protection against double jeopardy -- Right not to be tried for offence again if 'finally' acquitted of offence..." (R. v. Morgentaler, Smoling, & Scott, 1985).

In effect, if a jury were to return a verdict which in a legal sense seems unjustifiable, then the prosecution can appeal on legal grounds.

Although it seems clear that nullification by jurors is not an acceptable practice in Canadian courts, the debate continues. An approach which favoured the juries' right to nullification was adopted by a Quebec Superior Court judge in the trial of thirty-four Mohawks. Justice Louis Tannenbaum instructed the jurors during his final charge that it was their "absolute right to reach whatever verdict or verdicts [they choose]" (Boyer, 1992). More recently, the Defence for Robert Latimer, a farmer who was convicted of killing his disabled daughter, filed papers in the Saskatchewan Court of Appeal based upon the judge's improper instructions to the jury. The defense claims that

"The learned trial judge erred in failing to allow the jury to decide the case on what they felt was just, as opposed to requiring them to follow the black letter of the law ..." (Jang, 1995).

In effect, the defense is contending that the jury should have been allowed to exercise their "power" to nullify the law in this case. This appeal has been heard and the decision of the trial judge was upheld. There was, however, a dissenting opinion and as a result the case is being referred to the Supreme Court for review.

It is apparent that the debate over whether or not the jury should be instructed of their power for nullification continues. In general, jury nullification is seen as an infrequent event in criminal trials which is best discouraged.

Empirical Research

For years, researchers have been examining the role and function of juries in

court. Many different approaches to this problem have been proposed but, for the most part, their value is limited. Observational study is ruled out because only jurors are permitted in the deliberation room. The questioning of jurors after the fact is an empirical possibility, but in some jurisdictions this must be ruled out. In Canada, Section 649 of the Criminal Code expressly states that

"Every member of a jury who, except for the purposes of

(a) an investigation of an alleged offence under subsection 139(2) [obstructing justice] in relation to a juror, or

(b) giving evidence in criminal proceedings in relation to such an offence,

discloses any information relating to the proceedings of the jury when it was absent from the courtroom that was not subsequently disclosed in open court is guilty of an offence punishable on summary conviction."
(Quinlan, 1993)

As a result, the study of the jury decision-making process may be carried out in one of two ways: an archival study of testimonies and verdicts after the fact, or through the use of jury simulations. Since the concept of second-guessing the jury is inherently involved in the archival approach, the favoured method of approaching the study of jury decision-making is through the use of jury simulations.

Past research using the jury simulation paradigm has shown that jury verdicts vary as a function of the amount of evidence presented at trial, the type of evidence presented at trial, and the composition of certain judicial instructions (Myers, 1979; Wiener, Habert, Shkodriani, & Staebler, 1991; Spanos, DuBreuil, Hornick, & Moore, 1993; Spanos, DuBreuil, & Gwynn, 1991; Spanos, Gwynn, & Terrade, 1989;

DuBreuil, 1989; Kerr & Atkin, 1976). Research has also indicated that extralegal variables (e.g., demeanor of the complainant and defendant, juror gender, age of the complainant, etc.) may influence jury decisions (Spanos, DuBreuil, Coburn, & Auger, 1991; DuBreuil, Gerzon, & Spanos, 1991).

Little simulation research to date has focused upon the nullification debate. Most studies on jury nullification have been archival in nature, but there are some experimental studies which will now be discussed.

In 1979, Hans and Vidmar conducted a survey in Canada to determine the public's opinion as to whether juries should be informed of their nullification power (cited in Schefflin and Van Dyke, 1991). The results indicated that over 75% of the general population who responded were in favour of juries being instructed by the judge of their ability to nullify the law. An even more supportive response was given by people who had already served on a jury (93% were in favour of instruction). Conversely, less than 5% of the Canadian judges who responded were in favour of instructing jurors of their nullification power.

Horowitz (1985) conducted a simulation study to determine the effects of differing nullification instructions on jurors' decisions. Three types of nullification instruction were offered to juries in combination with three separate criminal cases. Subjects who received a "Radical Nullification Instruction", which explicitly outlined their nullification power, were found to convict the defendant more frequently in a drunk driving/homicide case than subjects who received standard pattern instructions or the formal Maryland state instructions. Radical nullification instruction subjects

were also found to return significantly fewer guilty verdicts than subjects in the other two groups when presented with a case of euthanasia. Content analysis of the deliberations revealed that the decisions of subjects in the radical nullification group were affected more than the others by the nature of the crime and the compassion they felt for the defendant (Horowitz, 1985). In general, Horowitz concluded that nullification instructions do have a significant effect on the verdicts and deliberations of jurors.

The use of nullification instructions as a defense for battered women who kill has also been addressed. Given (1993) conducted a jury simulation study in which the severity of abuse claimed by the defendant was varied (physical/psychological abuse condition), and the instructions given by the judge in his closing statement were also manipulated (nullification/no nullification). This study assumed that not guilty verdicts would be more frequent when the defendant had been subjected to physical and psychological abuse rather than psychological abuse alone. Not guilty verdicts were expected to occur more often when nullification instructions were given. The results showed that neither the severity of abuse nor the instructions given by the judge regarding nullification had any significant effect on jury verdicts or individual juror verdicts. Matuszek (1994) manipulated the type of mother (sympathetic/nonsympathetic) being tried for murder and the closing judicial instructions (nullification/no nullification). This study assumed that sympathetic mothers, who were portrayed as loyal wives and loving mothers, would receive more not guilty verdicts than non-sympathetic mothers who provided poor child care and

were promiscuous. The experimenter also assumed that nullification instructions would result in more not guilty verdicts. Similar to the previous study, the results showed that neither the type of mother nor the judicial instructions had any significant effect on jury verdicts.

The Present Study

As mentioned above, the present research is based on simulated testimony in a sexual assault trial. Sexual assault is a serious and prevalent crime and the charge of sexual assault carries with it some distinct and difficult evidentiary problems. Factors which are normally inconsequential become quite salient in sexual assault trials.

LaFree (1989) found that when the primary issue being adjudicated was whether the complainant consented voluntarily to sexual relations with the defendant extralegal considerations became important. Kalven and Zeisel (1966) found that juries would tend to acquit the defendant if the victim was perceived as a 'loose woman,' had voluntarily gone to the scene of the assault with the defendant, or had had prior sexual relations with him. DuBreuil, et al.(1991) looked at the dress and demeanour of complainants. They found that mock juries tended to believe less strongly in the defendant's guilt and render fewer guilty verdicts when presented with a victim dressed in a loose blouse and wearing heavy make-up than when shown a more conservatively dressed complainant.

In addition to these points of evidence, the decisions in trials by jury may be

influenced by cultural myths surrounding sexual assault. Examples of rape myths are "only bad girls get raped"; "any healthy woman can resist a rapist if she really wants to"; "women ask for it" (Burt, 1980). It has been suggested that rape myths result in jurors believing incorrectly that sexually active women invite and consent to rape, rapes are carried out by strangers and therefore sex between acquaintances must be consensual, women who do not physically resist submit voluntarily to intercourse, and that failure to report the incident immediately means that rape did not occur (Estrich, 1987). Rape myths, therefore, may cause jurors to make biased decisions. Unfortunately, to date, there have been no attempts to assess experimentally the impact of rape myth acceptance on jury verdicts.

Attitudes are another factor which can influence the decisions of jurors. Weir and Wrightsman (1990) found that when empathy for the rape victim was high, male jurors were more likely to render a verdict of guilty. Sex role stereotyping, distrust of the opposite sex, and acceptance of interpersonal violence have all been found to affect jurors decisions (Burt, 1980).

The most recent and extensive research into courtship violence can be found in "The Violence Against Women Survey" conducted by Statistics Canada (1993). The general findings in this study are that approximately one-half (51%) of the women in Canada have experienced an episode of physical or sexual violence since the age of sixteen (Statistics Canada, 1993). Sexual assault was defined in this study as "ranging from unwanted sexual touching to sexual violence resulting in wounding, maiming or endangering the life of the victim (Statistics Canada, 1993)". One of the most

disturbing statistics was that 57% of respondents who had experienced unwanted sexual touching, and 43% of those who had experienced a sexual attack, said that it had happened to them more than once (Statistics Canada, 1993).

All of the above mentioned difficulties indicate a theoretical barrier to the prosecution of sexual assault cases. Spanos, DuBreuil, and Gwynn (1991) found that in a mock juror study of a sexual assault trial the majority of both male and female jurors privately believed in the guilt of the defendant. This fact did not stop the majority of the juries from voting not guilty. In total, only 27.8 percent of the juries rendered a verdict of guilty (Spanos et. al., 1991).

In recent years, due in large part to the women's movement and increased public awareness, sexual assault has become a crime which is easier to prosecute successfully. Levine (1983) found a steady upward progression of the jury conviction rate for most of the years between 1961 and 1980. Factors which bias the court against the victim can now be monitored and corrected. Brekke and Borgida (1988) found that the use of expert scientific testimony resulted in increased rates of conviction, harsher recommended sentences, and more favourable perceptions of the victim. The use of expert testimony is one way to counteract the effects of rape myths and misconceptions on juror decisions. Similar findings were found in Spanos et. al. (1991). Generally, jury behaviour in sexual assault cases may be less tolerant towards the defendant as the public's attitudes toward women and knowledge of myths about rape have changed (Hans & Vidmar, 1986).

The purpose of this study was to determine whether or not the implementation

of nullification instructions would have an effect upon jury and juror verdicts in a sexual assault trial. The premise of the study was that nullification instructions may offer some jurors the excuse they need to acquit the defendant in a sexual assault trial. Given the many prosecutorial advances made when trying this type of trial it was ascertained that this may be an instance when the introduction of nullification instructions may be, as many opponents claim, an invitation to anarchy. This experiment should begin, therefore, to determine whether there are any negative effects of nullification instructions.

This study is a extension of an earlier study conducted by Spanos, DuBreuil, Hornick & Moore (1993). In that study, jurors were exposed to two levels of evidence strength (moderate or weak) and three levels of nullification instruction (explicit, vague, or none). In the explicit nullification condition, the judge offered the following guidance to the jury:

"Members of the Jury, before you retire to begin your deliberations it is imperative that you understand that you constitute a public body and as such that you are bound to give respectful attention to the law as I have defined it for you. Nevertheless, it is equally important that you understand that you, the Jury, have the final authority to decide whether or not to apply a given law to the acts of the defendant who is on trial here before you. More explicitly, it is important that you understand that you, the Jury, represent your community, and that it is appropriate to bring into your deliberations the feelings of the community and your own feelings based on conscience. Finally, it is imperative for you to understand that, despite your respect for the law, nothing bars you from acquitting the defendant if you feel that application of the law to the specific case before you would produce an inequitable or unjust result."

In the vague nullification condition, the judge advised the jury using the form of nullification instruction employed by U. S. courts in the state of Maryland. These

instructions were used to summarize ambiguously the jury's power. The nullification instructions used were as follows:

"Members of the Jury, this is a criminal case, and in a criminal case the jury are the judges of law as well as the facts in the case. So that whatever I tell you about the law, while it is intended to be helpful to you in reaching a just and proper verdict in the case, it is not binding upon you as members of the jury and you may accept or reject it. And you may apply the law as you apprehend it to be in this case."

The third condition was used as a control for nullification instructions. In this scenario, the jurors were simply shown the judge's charge.

The results showed that the verdicts of jurors who received nullification instructions did not differ from the verdicts of jurors who received no instructions. The results also showed that juries who received nullification instructions were not likely to acquit the defendant. However, this result was not conclusive. Of the thirty-six juries tested in the original study, two were hung, while the remaining thirty-four returned a verdict of guilty. There would appear to have been a ceiling effect due to the level of evidence. Both of the hung juries in the original study were found in the weak evidence condition.

Subsequently it was decided to look more closely at the effects of nullification instructions in the weak evidence condition. Brekke and Borgida (1988) suggested that jurors often seem reluctant to render guilty verdicts in sexual assault trials when the main issue becomes one of "his word against hers". By changing the testimonies of the complainant and defendant in the weak evidence condition, more variability in the verdicts may arise and, hence, the present study may offer a clearer view of the

effect of nullification. It is possible, therefore, that nullification instructions may have an effect in the present study because the testimonies of the complainant and defendant conflict.

This experiment aimed to assess the effects of nullification instruction on jury and juror verdicts. Subjects were presented with a videotaped simulation of a court trial and were asked to deliberate to a unanimous verdict. Half of the juries tried a case that involved conflicting testimonies and the remainder tried a case where there was general agreement between the complainant and the defendant. Within these conditions, juries were given either explicit or no nullification instructions. The explicit nullification instructions clearly define the juries' right to act as the community conscience and judge the facts of the case as they see fit.

In summary, it has been asserted that specific nullification instructions would cause a jury to behave in a fundamentally different way (Hans and Vidmar, 1986; Horowitz, 1985; Horowitz and Willging, 1991; Scott, 1989). The purpose of this study was to determine whether or not nullification instructions have an effect on juror decision-making in a simulated sexual assault trial. The results should show the effect of nullification instructions in cases where convictions have historically been difficult to secure. It was hypothesized that the introduction of conflicting testimonies would reveal the effects of nullification instructions which were not found in the previous study. Subsequently, it was hypothesized that the conflicting testimonies would result in more not guilty verdicts than the concurring testimonies.

Jury verdicts are used to determine the effects of nullification instructions upon

each group of subjects. Juror verdicts reveal the effects of group discussion upon the individual jurors' decisions. Juror private belief ratings are used to determine which portions of the trial contributed to each jurors' decision. The one-item questionnaire was used to determine the effects of juror perceptions of the defendant and the complainant on the overall verdicts. The other pre-measures were used to indicate the prevalent attitudes and beliefs of the individual jurors.

METHOD

Subjects

Subjects were 214 Carleton University undergraduate psychology students (101 males and 113 females; ages 18-43 years) who volunteered to participate in a simulated jury trial involving a defendant charged with sexual assault. All subjects were awarded experimental credits for their participation.

Procedure

Subjects were randomly assigned to one of 36 juries with between four and eight people on each jury. The 36 juries were randomly assigned to the 4 cells of a 2 x 2 (conflicting/concurring testimonies x explicit/no nullification) design with the restriction of an equal number of juries ($n = 9$) in each of the four cells.

Upon arrival, jurors were given an Informed Consent Form (Appendix A) and then asked to fill out a battery of premeasures (Appendix B). Included in this package were the Attitudes Toward Women Scale (ATW; Spence, Helmreich, & Strapp, 1973) and scales to measure social desirability (Crowne & Marlowe, 1964), social appropriateness (Lennox & Wolfe, 1984), and compliance (Gudjonsson, 1989).

Following completion of the premeasures, juries were shown a videotaped

simulation of a sexual assault trial. This trial included; a) the Judge's opening statements, b) the opening statements of the Crown and Defense, c) the testimonies for the Crown, d) testimonies for the Defense, e) the closing arguments of both counsels, and f) the Judge's charge to the jury which summarizes the Crown and Defense cases, and advances one of the two nullification instructions (explicit/none). One of four separate versions of the trial was randomly selected and shown to each jury. The versions were; a) concurring testimony/no nullification, b) concurring testimony/explicit nullification, c) conflicting testimony/no nullification, d) conflicting testimony/explicit nullification.

Assessments of individual juror's private beliefs of guilt were conducted four times throughout the trial. First, following the testimonies for the Crown, second, following the testimonies for the Defense, third, following the Judge's charge, and fourth, immediately after jury deliberations. An 11-point scale was used at each of these points to assess the jurors private beliefs (Appendix C). Possible responses range from "certain that he did not rape Ms. Tims" (scored -5) through "uncertain" (scored 0) to "certain that he did rape Ms. Tims" (scored +5).

Following the judge's charge, jurors selected a foreperson who was responsible for collecting individual juror verdicts prior to and after deliberations (Appendix D). After informing the jurors that they have a maximum of ninety minutes to deliberate to a unanimous verdict, the experimenter left the room until called upon to return. If a jury returned a non-unanimous verdict before the ninety minutes are up they were told the following;

"Jury deliberations are a serious and important process. I'd like you to go back and try once again to reach a unanimous verdict. It is important that you try to resolve your differences and attempt a second time to reach a verdict of guilt or innocence."

If these jurors were still unable to come to a unanimous verdict, or if they fail to reach a unanimous verdict before the end of the deliberation time, then the jury was declared hung.

Following deliberations, jurors completed another battery of questionnaires. This package included a demographic questionnaire and a survey to rate the extent to which the jurors felt that the defendant or complainant was believable, compliant, and responsible (Appendix E).

Upon completion of the post-measures, subjects were given a debriefing package which outlined the purpose of the study (Appendix F). Any questions which the subjects may have had were answered at this time. Credit slips for participation were then handed out and the subjects were free to leave.

Treatments

In both the concurring and conflicting testimony conditions, the alleged sexual assault took place in the complainant's apartment following a date. Jurors were informed that the complainant (Miss Janet Tims) was 22 years old, stood 5' 4" tall, and weighed 112 pounds while the defendant (Mr. James Gavin) was 25 years old, stood 6' tall and weighed 200 pounds. The defendant was described as a Master's student in computer science who had never before been in trouble with the law.

Jurors were told that the complainant was a third year student studying English literature. In all conditions, juries were told that the complainant and defendant had met in the cafeteria at school through mutual friends and had since gone on two dates. It is following their second date that the alleged crime takes place.

Concurring Testimonies

In the concurring testimony condition, Miss Tims testified that on their first date she had become intoxicated and consented to sexual intercourse with Mr. Gavin following dinner. She further testified that she agreed to meet for a second date the following evening at the library. After an evening in the library, the couple went out to a pub for a beer and then returned to Miss Tims' apartment. Miss Tims invited Mr. Gavin in for a cup of tea and, while waiting for the water to boil, they were both seated on the couch.

Once the two were seated on the couch, according to Miss Tims, they began to kiss and stroke each other. After a few minutes, Mr. Gavin became more aroused and attempted to remove articles of Miss Tims' clothing. Although at first she protested, she eventually stopped pushing his hand away and permitted him to remove her blouse and bra. When Mr. Gavin attempted to remove Miss Tims' underwear, she protested. Miss Tims testified that she stopped kissing Mr. Gavin and told him to stop. When he continued, despite her protests, she became frightened, upset, and attempted to twist away from him. Realizing that she was pinned against the couch

she tried to hold her legs closed while telling Mr. Gavin to stop. The complainant claims that, despite the fact that she was terrified and crying, Mr. Gavin proceeded to force her legs open and have intercourse with her. Following intercourse, Mr. Gavin attempted to console Miss Tims but, in her hysterical state, she asked him to leave her alone and to go away. Mr. Gavin promptly left the apartment.

According to Mr. Gavin, once the two were seated on the couch they began kissing and rubbing each other. Although Miss Tims did protest mildly when he began to remove her clothing, the defendant claimed that these protests were token gestures and not really genuine. Mr. Gavin further testified that despite Miss Tims' protests she continued to kiss and caress him. When he attempted to remove Miss Tims' underwear, her protests were once again seen as superficial motions used to maintain appearances. The defendant claimed that the two had moved from a position of sitting on the couch to one of half sitting, half lying down but that he had not pinned the complainant to the couch. Following intercourse, Mr. Gavin noticed that Miss Tims was upset and crying. He assumed that she was feeling guilty and possibly ashamed and attempted to console her. When asked to leave, Mr. Gavin claims that he did so because he did not wish to make Miss Tims feel any worse. The defendant further claims that it was his intention to see Miss Tims again and that he thought there was a possible future to their relationship (see Appendix G).

Conflicting Testimonies

The conflicting testimonies condition is similar to the concurring testimonies scenario. The complainant's testimony is almost identical to that found in the concurring testimonies condition. The main difference can be found in the testimony of the defendant who denies having intercourse with the complainant on their second date. On the occasion of their second date, the couple returned to Miss Tims apartment sat on the couch and began to kiss and fondle each other. Miss Tims once again protested at Mr. Gavin's attempts to fondle her breasts. In the conflicting testimony scenario, however, Mr. Gavin claims that he abided by her protests and stopped his advances. The defendant claims that when he stopped his advances, Miss Tims became upset and was crying. He attempted to console her, but she asked him to leave. Once again he claims that he acknowledged her request and left the apartment. The police were called by the complainant one-half hour after the defendant's departure (see Appendix H).

In both of these cases, the attorney for the Defense presents the theory that Miss Tims was frightened that Mr. Gavin would consider her cheap or easy. Fearing that she may never see him again, she made up the story of the rape. According to this theory, Miss Tims would have confronted Mr. Gavin with the rape while he was still in her apartment rather than waiting to call the police one half hour after he left. The Defense further claims that if Miss Tims had truly been raped one or the other of the two parties would have been injured in some way. The fact that neither displayed

any cuts or bruises when examined by a physician was thought to prove that Miss Tims had not truly tried to fight off Mr. Gavin.

Nullification Instructions

Juries were exposed to explicit nullification instructions or received no nullification instructions (see Appendix I). The explicit instructions are worded in a manner which clearly outlines the jury's power to judge the defendant by community standards and conscience. In the explicit nullification condition, the judge offered the following guidance to the jury:

"Members of the Jury, before you retire to begin your deliberations it is imperative that you understand that you constitute a public body and as such that you are bound to give respectful attention to the law as I have defined it for you. Nevertheless, it is equally important that you understand that you, the Jury, have the final authority to decide whether or not to apply a given law to the acts of the defendant who is on trial here before you. More explicitly, it is important that you understand that you, the Jury, represent your community, and that it is appropriate to bring into your deliberations the feelings of the community and your own feelings based on conscience. Finally, it is imperative for you to understand that, despite your respect for the law, nothing bars you from acquitting the defendant if you feel that application of the law to the specific case before you would produce an inequitable or unjust result."

The second condition was used as a control for nullification instructions. In this scenario, the jurors were simply shown the judge's charge.

The judge's charge preceded the nullification instruction in both the conflicting and concurring testimony conditions. The judge's charge offered a summary of the cases presented by the Prosecution and the Defense, and defined the reasonable doubt

criterion (as outlined by Black, Nolan, and Connolly, 1979, p. 441). A reasonable doubt was outlined by the judge as:

"not proof beyond all possible or imaginary doubt. Instead, it is proof that precludes every reasonable hypothesis except the hypothesis that it tends to support. Proof beyond a reasonable doubt is proof to a moral certainty. Proof beyond a reasonable doubt is proof strong enough to convince reasonable people who have examined the evidence before them that the crime that the defendant is charged with has been committed by the defendant. Proof beyond a reasonable doubt is proof that convinces reasonable people that no other reasonable conclusion is possible."

Measurement Instruments

Premeasures

Prior to the administration of the trial stimuli, subjects were administered a battery of four questionnaires. A short version of the Attitudes Towards Women Scale (Spence, Helmreich & Strapp, 1973) was used to measure beliefs about equality and the role of women in society. Responses to the 25 item scale were marked on a 4-point Likert type scale ranging from "agree strongly" to "disagree strongly". The ATW scale has demonstrated acceptable reliability (.90) (Terpstra & Baker, 1986). An index of ATW is obtained by summing responses across 25 items such that high scores indicate more liberal attitudes toward women.

A Social Appropriateness Scale (Lennox & Wolfe, 1984) is used as a measure of tendencies to conform. Responses to the scale were marked on a 6-point Likert

type scale which ranges from 0 (not at all applicable) to 5 (extremely applicable). It contains two subscales, cross-situational variability and attention to social comparison information. The scale has good internal consistency with a reported alpha-coefficient of .86 (Lennox & Wolfe, 1984). High scores indicate high concern for appropriateness.

A Compliance Scale (Gudjonsson, 1989) was used to assess subjects' susceptibility to comply with requests and obey instructions which they would ordinarily reject. Responses to the 20-item scale were marked on a true or false basis. This scale has high construct validity (Gudjonsson, 1989) and has in the past been found to accurately predict tendencies towards compliance.

A Social Desirability Scale (Crowne & Marlowe, 1964) was used to assess the extent to which the individuals modified their behaviour to reflect that of the majority. Responses to 33 item scale were marked on a true or false basis. The internal consistency coefficient of the scale was found to be .88 with a test-retest correlation of .88 (Crowne & Marlowe, 1964). Higher scores on the scale indicate a tendency for subjects to portray themselves in very favourable terms.

Jury and Juror Verdicts

During deliberations, the foreperson for the jury was required to collect and tally ballots from each of the jurors. Individual juror verdicts were taken as often as the foreperson wanted, but only those taken at the beginning and end of the

deliberation period were kept for statistical analysis. This provides a measure for the effect of deliberation on jurors. The individual ballot form asked the respondent to indicate whether they thought the defendant was guilty or not guilty (dichotomous scale) of sexually assaulting the complainant. Jury verdicts were presented to the experimenter at the end of deliberations. Juries returned a verdict of guilty, not guilty, or hung.

Private Beliefs

Private beliefs in the defendant's guilt were rated four times during the trial (after prosecution/after defense/after judge's charge/after deliberation). Responses were marked on an 11-point Likert type scale which ranges from -5 (certain that he did not commit the crime), through 0 (unsure), to +5 (certain he did commit the crime). Jurors were instructed that private belief ratings did not have to reflect their formal verdicts and were not binding. This measure has been used in numerous mock jury studies (Spanos, et al., 1991).

Attributions

Following deliberations, the subjects were given a one-item questionnaire which assessed their opinions with regard to the complainant and the defendant. Questions pertained to the levels of complainant responsibility, defendant

responsibility, complainant consent, complainant believability, defendant believability, complainant credibility, and defendant credibility. Responses were rated on a 7-point Likert type scale with alternatives which range from 1 (not at all) to 7 (completely).

RESULTS

It was hypothesized that the introduction of conflicting testimonies would reveal any effects of nullification instructions which were not found in the previous study by Spanos et al. (1993). It was expected that the effects of nullification instructions upon the decisions of juries or jurors in a simulated sexual assault trial would be revealed in the differing verdicts of the testimony conditions. The type of testimony (concurring or conflicting) was expected to affect their decisions. It was hypothesized that the conflicting testimonies would result in significantly fewer guilty verdicts than the concurring testimonies.

Pre-measures

Previous research has suggested that gender, attitudes and beliefs affect the decisions of jurors in trial simulations. In order to confirm that subjects responses to the four pre-measures (Crowne, SAS, Compliance, ATW) did not differ across the four conditions, a $2 \times 2 \times 2$ (gender x testimony x nullification) multivariate analysis of variance was conducted. A significant main effect for gender was achieved, $F(5, 202)=9.72$, $p < .001$, $\eta^2 = .2$. Corresponding univariate tests showed that gender was a significant factor for the ATW scale scores only, $F(1,206)=48.10$, $p < .001$, $\eta^2 = .18$. Gender failed to influence any of the other measures. Significantly higher

ATW scores were found for females than for males (see Table 1). Higher ATW scores indicate more liberal attitudes toward women and as a result we might expect females to rate the complainant more favourably than males in the upcoming analysis. The other pre-measures used seem to indicate a uniformity in the prevalent attitudes and beliefs of the individual jurors and, as a result, we can attribute any differences in the rest of the analysis to the experimental manipulations.

Jury Verdicts

Recall that after watching the videotaped simulations juries were given 90 minutes to deliberate to a unanimous decision. The final verdict for each group was scored (-1) not guilty, (0) hung, and (1) guilty. Overall, the juries found the defendant guilty more often (55.6%) than not guilty (36.1%), with 8.3% hung (See Table 2).

To assess the effects of nullification instruction and evidence strength, a 2 x 2 (testimony x nullification instruction) analysis of variance was conducted on the final verdicts of all juries. See Table 3 for the ANOVA summary. The main effect for testimony was found to be significant, $\eta^2 = .46$. Juries in the conflicting testimony condition returned significantly fewer verdicts of guilty than those in the concurring evidence condition.

Individual Juror Verdicts

Jury members returned individual verdicts at pre and post-deliberation. A 'not guilty' verdict received a score of -1 and a 'guilty' verdict received a score of 1. A $2 \times 2 \times 2 \times 2$ (interval x testimony x gender x nullification instruction) mixed analysis of variance was used to analyze juror's verdicts before and after deliberations. The analysis contained three between-subjects variables (testimony x nullification instruction x gender) and one within-subjects variable (rating interval: before deliberations/after deliberations). Groups were nested under treatments in this analysis (Keppel, 1982). See Table 4 for the Anova summary. Main effects for testimony and interval were found to be significant, but were qualified by significant two-way interactions.

The two-way gender x interval interaction was found to be significant. The simple main effect for gender was found to be significant, $F(1,412)=11.39$, $p < .01$, $\eta^2 = .02$, at the pre-deliberation verdict level. Females were more likely to judge the defendant to be guilty than males (See Table 5) on the pre-deliberation verdict. The simple main effect for interval also reached significance for females, $F(1,142)=17.05$, $p < .01$, $\eta^2 = .02$. Females were more likely to judge the defendant to be guilty before deliberation than after deliberation.

The two-way testimony by interval interaction also achieved significance, $F(1,64)=14.81$, $p < .001$, $\eta^2 = .08$. The simple main effects of interval for the conflicting testimony condition and the concurring testimony condition also achieved

significance. Subjects in the conflicting testimony condition returned significantly more guilty verdicts at pre-deliberation than at post-deliberation (See Table 6).

Subjects in the concurring evidence condition returned significantly fewer verdicts of guilty at pre-deliberation than at post-deliberation.

Private Beliefs

Private ratings of guilt were measured four times throughout the trial.

Responses were marked on an 11-point Likert type scale which ranges from -5 (certain the defendant did not commit the crime), through 0 (unsure), to +5 (certain the defendant did commit the crime). A $4 \times 2 \times 2 \times 2$ (interval $\times$ testimony $\times$ gender $\times$ nullification) mixed analysis of variance was used to analyze jurors' private belief ratings during the trial. The analysis contained three between-subjects variables (testimony $\times$ nullification $\times$ gender) and one within-subjects variable (rating intervals: after prosecution/after defense/after judge's charge/after deliberation). Once again, groups were nested under treatments. See Table 7 for the ANOVA summary table.

The main effect for gender was found to be significant. On average, males had significantly lower private beliefs in guilt than females (See Table 8). Main effects of testimony, $F(1,64)=45.30$, $p < .001$, $\eta^2 = .21$, and interval, $F(3,423)=12.64$, $p < .001$, $\eta^2 = .05$, were also found to be significant but were qualified by significant two-way interactions.

The two-way testimony $\times$ interval interaction was found to be significant. The

simple main effects of interval for the conflicting testimony condition and the concurring testimony condition also attained significance (see Table 9 for the means and standard deviations associated with these interactions). Neuman-Keuls post hoc comparisons revealed that private beliefs of guilt assessed after the Crown testimonies and the judge's charge failed to differ, but were both significantly higher than the private beliefs assessed after the deliberations in the conflicting testimony condition. Subjects in the concurring testimony condition believed the defendant to be significantly more guilty after deliberations than after the crown testimonies, the defense testimonies, or the judge's charge. Private belief ratings following the defense testimonies and the judge's charge did not differ, but were both significantly higher than the private beliefs assessed after the prosecution testimonies.

The two-way testimony x nullification interaction was found to be significant. The simple main effect of testimony for the no nullification condition and the explicit nullification condition also attained significance. See Table 10 for the means and standard deviations associated with this interaction. Subjects in the conflicting testimony condition tended to have significantly lower private beliefs in the no nullification condition than subjects in the explicit nullification condition. Subjects in the concurring testimony condition tended to have significantly higher private beliefs in guilt ratings in the no nullification condition when compared to subjects in the explicit nullification condition.

Attributions of Fault (One-Item Questionnaire)

Following deliberations, the subjects were given a one-item questionnaire which assessed their opinions with regard to the complainant and the defendant. Responses were rated on a 7-point Likert type scale with alternatives which range from 1 (not at all) to 7 (completely). A $2 \times 2 \times 2$ (gender x testimony x nullification) multivariate analysis of variance was conducted on jurors' ratings of complainant responsibility, defendant responsibility, complainant consent, complainant believability, defendant believability, complainant credibility, and defendant credibility. A significant main effect was obtained for the gender variable, $F(7,200)=3.39$, $p < .01$, $\eta^2 = .11$. Univariate analysis showed that gender had no effect on the credibility rating of the defendant, but did significantly influence the jurors' responses to the other six questions. Significant univariate main effects at gender were found for complainant responsibility, defendant responsibility, complainant consent, complainant believability, defendant believability, and complainant credibility. Males rated the complainant as more responsible for the events of the case and the defendant as more believable. Males also rated the complainant as consenting more. Females, on the other hand, rated the defendant as more responsible and the complainant as more credible and believable. The univariate means and standard deviations associated with these main effects are given for males in Table 11 and for females in Table 12.

A significant main effect was also found for testimony, $F(7,200)=17.08$,

$p < .001$, $\eta^2 = .38$, but was qualified by a significant two-way testimony x nullification interaction, $F(7,200) = 8.23$, $p < .05$, $\eta^2 = .08$. Significant univariate interaction effects were found for complainant responsibility, defendant responsibility, complainant consent, complainant believability, and defendant believability. Univariate analysis showed that the testimony x nullification interaction had no effect on the credibility ratings of the complainant or the defendant.

Analysis of the simple main effects revealed some interesting differences between the four conditions on their responses to the One-Item Questionnaire. Subjects in the concurring testimony condition had significantly higher ratings of complainant responsibility, complainant consent, and defendant believability and lower ratings of defendant responsibility when given an explicit nullification instruction as opposed to no nullification instruction. Subjects in the no nullification condition had significantly lower ratings of complainant responsibility and complainant consent, but significantly higher ratings of defendant responsibility and complainant believability in the concurring testimony condition than in the conflicting testimony condition. The explicit nullification condition resulted in significantly higher ratings of defendant responsibility, complainant believability, and defendant believability in the concurring testimony condition. The univariate means and standard deviations associated with these simple main effects are given in Table 13.

Correlations

Pearson Product Moment Correlations were computed between the four pre-measures, age, and the dependent measures assessed throughout the trial(see Tables 14). Examination of the pattern of correlations generally revealed nonsignificant differences between corresponding pairs of correlations. For both males and females the four compliance measures failed to adequately predict jurors' private beliefs, pre and post deliberation verdicts, or their attributions of blame. Male and Female juror ratings of complainant responsibility and complainant consent were inversely related to their private beliefs in guilt and their juror verdicts (See Table 15). Male and female juror ratings of defendant responsibility, complainant believability, and complainant credibility were moderately correlated with their private beliefs in guilt and their juror verdicts. Ratings of defendant credibility were not significantly correlated with private beliefs or juror verdicts for males or females.

Summary of Results

Nullification instructions were found to have no effect upon the jury verdicts or juror verdicts and only a very slight effect upon the private beliefs of jurors. Nullification instructions were found to affect the jurors' opinions of the defendant and the complainant but once again the effect was minimal.

Testimony type was found to significantly effect the decisions of juries and

individual jurors. Jury verdicts, juror verdicts, and private belief ratings for jurors all tended significantly towards guilty in the concurring testimony condition and not guilty in the conflicting testimony condition. Testimony type was also found to significantly affect the jurors' ratings on the One-Item Questionnaire which assessed the believability, credibility, and responsibility of the complainant and the defendant.

Finally, gender differences were found to significantly influence the responses of jurors. The responses of males and females differed significantly on all of the dependant measures as well as the Attitudes Toward women scale and the One-Item Questionnaire.

DISCUSSION

The implications of the introduction of a nullification doctrine into the courts has been debated for centuries. Only recently have the effects of nullification instructions begun to be empirically tested and the range of crimes looked at has been limited. The main purpose of this study was to determine the effects of nullification instructions on jury and juror verdicts in a sexual assault trial. This experiment was a continuation of a previous experiment conducted by Spanos, et al. (1993). The present findings, like those of the previous study, indicated that juries who receive explicit nullification instructions did not give significantly different verdicts than their counterparts who received no such instruction.

Nullification Instructions

The most notable outcome of this investigation is that the verdicts of jurors who received explicit nullification instructions did not differ from the verdicts of jurors who received no instruction. Contrary to the beliefs of many opponents of jury nullification, the results showed that juries who received nullification instructions were not likely to alter their verdicts. Jury verdicts for the nullification condition (61 % guilty, and 39% not guilty) were not significantly different from the verdicts for the no nullification condition (50% guilty, 33% not guilty, and 17% hung). Each of the

measures used in this experiment has been tried and proven reliable in other jury simulations. There can be no doubt that an effect of nullification instructions would have been detected if it had been present. Power is not in question either as there were two hundred and fourteen jurors in total and nine juries per condition. Given the large sample N, we can assume that the test has been made powerful against any given alternative.

From the findings of this study we can conclude that nullification instructions do not affect the decisions of juries in a sexual assault trial. Similar findings have been reported in the past. Given (1993) showed that neither the severity of abuse nor the instructions given by the judge regarding nullification had any significant effect on jury verdicts or individual juror verdicts. Matuszek (1994) showed that neither the type of mother nor the judicial instructions had any significant effect on jury verdicts.

There have, however, been studies which reflect different findings. Horowitz (1985) reported that subjects who received a "Radical Nullification Instruction" were found to convict the defendant more frequently in a drunk driving/homicide case. Radical nullification instruction subjects in this study were also found to return significantly fewer guilty verdicts than subjects in the other two groups when presented with a case of euthanasia. In general, Horowitz concluded that nullification instructions do have a significant effect on the verdicts and deliberations of jurors.

The generalizability of mock jury simulations to actual courtroom situations has in the past been questioned. The subjects in the studies which reported no effect for nullification instructions were all undergraduate university students. The study by

Horowitz (1985) which did find an effect for nullification was run upon subjects taken from the Ohio juror roles. It has been suggested that real jurors may inadvertently nullify the judge's charge because they are out of the habit of following instructions while students are accustomed to following directions in the academic environment (Weiner et al., 1991). In comparing past research, however, it can be concluded that mock jury simulations are a valid predictor of decisions in real jury situations. Kalven & Zeisel (1966) looked at actual trials and found that evidence strength was the most important factor in determining jury outcomes. Mock jury simulations have also found that evidence strength is a strong predictor for jury outcomes (Dubreuil et al., 1991; Spanos et al., 1991; Dubreuil, 1989). In addition, the more advanced simulations, which present a full trial and give the jurors a chance to deliberate, eliminate the problems of salience, effects of deliberations, and the effects of trial simplicity for which other jury studies have commonly been attacked. Given that mock jury simulations, such as that used for the present experiment, have been found to be accurate predictors of real jury decisions, we can generalize our finding that nullification instructions will not affect jury decisions in sexual assault trials.

Testimony Type

The results of this experiment lend credence to the idea that juries are often reluctant to return guilty verdicts when the trial becomes a question of the complainant's word versus the defendant's word. Jurors who saw the concurring

testimony case tended to return more guilty verdicts (89% guilty, 5.5% not guilty, and 5.5% hung) than jurors who tried the conflicting testimony case (22% guilty, 67% not guilty, and 11% hung) even though the evidence presented at the trials remained consistent. The major difference between the two types of testimony presented in this study occurred in the testimony of the defendant. In the concurring testimony condition, both parties testified that sex had occurred but the defendant stated that it was consensual and the complainant stated that it was sexual assault. In the conflicting testimony condition, the testimonies differed in that the defendant stated that intercourse had not occurred. It would seem, therefore, that physical evidence plays a smaller role in sexual assault trials than the testimonies of the complainant and the defendant.

In interpreting the results of the testimony manipulation, we must remain aware of the effects of rape myths and misconceptions. Brekke & Borgida (1988) have suggested that rape myths and misconceptions can have detrimental effects upon juror evaluations of the victim and judgments about the case. Previous research has demonstrated that misconceptions about sexual assault and attitudes toward women predict jurors' judgments (Spanos et al., 1991). In this case, when there was a difference in the testimonies of the complainant and the defendant, the complainant's testimony appears to have been de-valued. Jurors in the concurring evidence conditions privately believed that the defendant was guilty to a greater extent than jurors in the conflicting testimony conditions. Testimony type was also found to influence the jurors' perceptions of the defendant and the complainant. Subjects in the

concurring testimony condition rated the defendant as more responsible and the complainant as more credible and more believable. Subjects in the conflicting testimony condition had higher ratings for complainant consent and complainant responsibility. In effect, the results seem to indicate that the conflicting testimony conditions resulted in the jurors adopting a more sceptical view of the complainant and her testimony.

Gender Differences

Gender differences occurred with respect to individual juror verdicts, private beliefs, and attribution of fault. Males returned significantly fewer verdicts of guilt and were more likely to believe privately that the defendant was not guilty. Similar findings for sexual assault trial simulations have been previously reported (Spanos et al., 1991; Brekke & Borgida, 1988). The gender bias was also apparent in the attribution of fault ratings where males rated the defendant as more believable and the complainant as more responsible and more consenting while females rated the defendant as more responsible and the complainant as more credible and believable.

The differences found here may have resulted from the male jurors' ability to empathize with the defendant or, conversely, from the female jurors' ability to empathize with the complainant. These differences may be an expression of jurors' prior attitudes and beliefs (Gabora et al., 1993). Females in the present study were found to have significantly more profeminist attitudes and this may explain the

differences found in the way males and females responded to the trial testimony. The specific association felt by jurors may have caused them to attend to information which affirmed their beliefs while ignoring information that contradicted their beliefs (Spanos et al., 1991). Consequently, the individual jurors' predilections toward the complainant or the defendant may have influenced their verdicts.

Legal Implications

This research has a number of implications regarding legal policy. Foremost is the fact that nullification instructions appear to be ineffective in sexual assault trials. The introduction of the instructions was not found to affect the decisions of jurors in either the concurring or conflicting testimony condition. Consequently, nullification instructions should not be used when trying this type of crime.

The implications of the testimony manipulation from a legal standpoint are also worth noting. The types of testimony portrayed in this simulation relied upon very little physical evidence. The majority of information with which juries made their decisions was found in the verbal testimony of those associated with the crime and its investigation. This in itself is unique in jury simulation research into the use of nullification instructions. In combining the results of the original study by Spanos et al. (1993) with the results of this study, we can draw the limited conclusion that nullification instructions do not have an effect when there is an absence of physical evidence. It is possible that in the absence of physical evidence juries base their

decisions upon their own beliefs and instructing them of their ability to do this may be superfluous. The possibility that juries would be more likely to make use of nullification instructions in a case where physical evidence is a more prevalent factor is a possibility for future research.

One final implication which should be discussed is the potential effect of nullification instructions on jurors' opinions of the complainant and the defendant. Under certain evidence conditions it would appear that nullification instructions can significantly affect jurors' perceptions. In the present study, the introduction of the nullification instruction in the concurring testimony condition resulted in significantly higher ratings of complainant responsibility, complainant consent, and defendant believability and lower ratings for defendant responsibility. The possibility of the instructions affecting the credibility and believability of the complainant or defendant in the trial has never been addressed. Although the effect in this case was not large, it was significant. In future research, using different crime types, the effect of nullification instructions upon the jurors' perceptions may play a larger role and as a result should be looked at.

Conclusion

As discussed earlier, empirical research regarding the effects of jury nullification procedures is scarce. Although a great deal of archival research has been conducted, the findings have not been conclusive and, as a result, the nullification

debate continues. Future research should focus on the influence of nullification instructions on different types of crime. The limited range of crimes used in simulation studies has revealed little of the potential effects of nullification. The nullification ruling has historically been used to protect criminal defendants who inspire sympathy in the jurors (Tavris, 1983). Crime types for future research should concentrate upon causes which are seen as praiseworthy in the eyes of the general public.

This study was conducted in the hopes of shedding some empirical light upon the long-standing debate over jury nullification. The results can be interpreted to show that a nullification instruction does not affect the overall verdicts of jurors but may influence the decision-making process of jurors. It is important, however, that these results be substantiated by further study before any general conclusions are drawn.

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Table 1 Mean Juror Ratings on the ATW Scale by Gender by Testimony and by Nullification

<u>Condition</u>	<u>Gender</u>			
	<u>Male</u>		<u>Female</u>	
	<u>M</u>	<u>sd</u>	<u>M</u>	<u>sd</u>
Conflicting				
No Nullification	56.52	9.15	63.62	6.61
Explicit Nullification	56.70	8.84	64.04	5.61
Concurring				
No Nullification	60.35	8.01	66.50	4.98
Explicit Nullification	54.16	9.23	64.00	9.97

Table 2 **Frequencies, Means and Standard Deviations Of Jury Verdicts Across Conditions**

<u>Condition</u>	<u>n</u>	<u>Guilty</u>	<u>Hung</u>	<u>Not Guilty</u>	<u>Mean</u>	<u>sd</u>
Conflicting						
No Nullification	9	1	2	6	-0.56	0.73
Explicit Nullification	9	3	0	6	-0.33	1.00
Concurring						
No Nullification	9	8	1	0	0.89	0.33
Explicit Nullification	9	8	0	1	0.78	0.67

Table 3 **ANOVA Summary Table for Jury Verdicts**

<u>Source</u>	<u>SS</u>	<u>df</u>	<u>MS</u>	<u>F</u>	<u>p</u>
Testimony	14.69	1	14.69	28.21	< .01
Nullification	0.03	1	0.03	0.05	n.s.
Testimony x Nullification	0.25	1	0.25	0.48	n.s.
Error	16.67	32	0.52		

Table 4 ANOVA Summary Table for Individual Juror Verdicts of Guilt

<u>Source</u>	<u>SS</u>	<u>df</u>	<u>MS</u>	<u>F</u>	<u>p</u>
<u>Between Subjects</u>					
Within Cells	67.00	142	.47		
Nest	127.87	64	2.00	4.23	< .001
Gender	5.41	1	5.41	2.71	n.s.
Testimony	89.07	1	89.07	44.58	< .001
Nullification	.15	1	.15	.07	n.s.
Gender x Testimony	.01	1	.01	.01	n.s.
Gender x Nullification	.48	1	.48	.24	n.s.
Testimony x Nullification	5.66	1	5.66	2.83	n.s.
Gender x Testimony x Nullification	.40	1	.40	.20	n.s.
<u>Within Subjects</u>					
Within Cells	42.33	142	.30		
Nest	32.01	64	.50	1.68	< .01
Interval	1.80	1	1.80	6.05	< .05
Gender x Interval	2.23	1	2.23	4.45	< .05
Testimony x Interval	7.41	1	7.41	14.81	< .001
Nullification x Interval	.01	1	.01	.01	n.s.
Gender x Testimony x Interval	.00	1	.00	.01	n.s.
Gender x Interval x Nullification	.02	1	.02	.04	n.s.
Testimony x Interval x Nullification	.57	1	.57	1.14	n.s.
Gender x Testimony x Nullification x Interval	.35	1	.35	.69	n.s.

Table 5 **Mean Juror Ratings for Gender by Interval**

		<u>Interval</u>	
<u>Gender</u>		<u>Pre</u>	<u>Post</u>
Males	<u>Mean</u>	.15	.17
	<u>sd</u>	.99	.99
Females	<u>Mean</u>	.52	.22
	<u>sd</u>	.86	.98

Table 6 Mean Juror Ratings for Testimony by Interval

<u>Testimony Type</u>		<u>Interval</u>	
		<u>Pre</u>	<u>Post</u>
Conflicting	<u>Mean</u>	0.02	-.45
	<u>sd</u>	1.01	0.90
Concurring	<u>Mean</u>	0.67	0.83
	<u>sd</u>	0.75	0.56

Table 7 **ANOVA Summary Table for Private Belief Ratings of Guilt**

<u>Source</u>	<u>SS</u>	<u>df</u>	<u>MS</u>	<u>F</u>	<u>p</u>
<u>Between Subjects</u>					
Within Cells	2021.96	141	14.34		
Nest	1486.14	64	23.22	1.62	< .01
Gender	253.24	1	253.24	10.91	< .01
Testimony	1051.94	1	1051.94	45.30	< .001
Nullification	2.54	1	2.54	0.11	n.s.
Gender x Testimony	4.65	1	4.65	0.20	n.s.
Gender x Nullification	1.47	1	1.47	0.06	n.s.
Testimony x Nullification	116.44	1	116.44	5.01	< .05
Gender x Testimony x Nullification	48.58	1	48.58	2.09	n.s.
<u>Within Subjects</u>					
Within Cells	1133.85	423	2.68		
Nest	644.24	192	3.36	1.25	< .05
Interval	101.66	3	33.89	12.64	< .001
Gender x Interval	8.19	3	2.73	0.81	n.s.
Testimony x Interval	185.41	3	61.80	18.42	< .001
Nullification x Interval	3.26	3	1.09	0.32	n.s.
Gender x Testimony x Interval	1.71	3	0.57	0.17	n.s.
Gender x Nullification x Interval	3.83	3	1.28	0.38	n.s.
Testimony x Nullification x Interval	5.64	3	1.88	0.56	n.s.
Gender x Testimony x Nullification x Interval	11.44	3	3.81	1.14	n.s.

**Table 8 Mean Juror Ratings on Private Beliefs by Gender by Testimony
and by Nullification**

<u>Condition</u>	<u>Interval</u>							
	<u>After Prosecution</u>		<u>After Defense</u>		<u>After Judge</u>		<u>After Deliberation</u>	
<u>Males</u>	<u>M</u>	<u>sd</u>	<u>M</u>	<u>sd</u>	<u>M</u>	<u>sd</u>	<u>M</u>	<u>sd</u>
<u>Conflicting</u>								
No Nullification	0.17	2.37	-.09	2.61	-.13	2.99	-.96	2.85
Explicit Nullification	0.46	2.70	0.58	2.83	1.50	2.24	0.77	3.71
<u>Concurring</u>								
No Nullification	1.58	2.76	3.31	2.21	3.46	2.49	4.31	1.85
Explicit Nullification	0.52	2.90	2.08	2.74	1.84	3.58	3.60	2.12
<u>Females</u>								
<u>Conflicting</u>								
No Nullification	1.72	2.14	1.41	2.04	1.55	2.87	1.10	3.20
Explicit Nullification	1.78	2.26	1.44	2.34	1.93	3.23	0.74	3.94
<u>Concurring</u>								
No Nullification	3.04	1.51	4.46	0.95	4.77	0.51	4.96	0.20
Explicit Nullification	2.45	2.50	3.81	1.99	4.26	1.57	4.48	1.98

Table 9 Mean Juror Ratings for Testimony by Interval

<u>Testimony</u>		<u>Interval</u>			
		<u>After Prosecution</u>	<u>After Defense</u>	<u>After Judge</u>	<u>After Deliberation</u>
Conflicting	<u>M</u>	1.11 _a	0.92 _a	1.29 _a	0.48 _b
	<u>sd</u>	2.45	2.51	3.13	3.50
Concurring	<u>M</u>	1.94 _a	3.44 _b	3.63 _b	4.35 _c
	<u>sd</u>	2.61	2.21	2.50	1.77

Note: Within rows, means sharing the same subscript fail to differ at $\alpha = .05$.

Table 10 **Mean Juror Ratings for Testimony by Nullification**

<u>Testimony</u>		<u>Nullification</u>	<u>Instruction</u>
		<u>No Nullification</u>	<u>Explicit Nullification</u>
Conflicting	<u>M</u>	0.70	1.16
	<u>sd</u>	2.27	2.54
Concurring	<u>M</u>	3.74	2.98
	<u>sd</u>	1.57	2.15

Table 11 **Mean Ratings for Males on the One-Item Questionnaire
by Evidence by Nullification**

		<u>Condition</u>			
		<u>CFNN</u>	<u>CFEN</u>	<u>CCNN</u>	<u>CCEN</u>
Complainant Responsibility	<u>M</u>	3.61	3.56	2.65	3.48
	<u>sd</u>	1.75	1.78	1.79	1.33
Defendant Responsibility	<u>M</u>	3.70	4.44	6.08	5.68
	<u>sd</u>	1.40	1.95	1.67	0.99
Complainant Consent	<u>M</u>	4.48	4.19	3.31	3.80
	<u>sd</u>	1.16	1.36	1.67	1.04
Complainant Believability	<u>M</u>	3.91	4.41	6.23	5.56
	<u>sd</u>	1.59	1.62	0.82	1.08
Defendant Believability	<u>M</u>	4.44	3.89	3.92	4.40
	<u>sd</u>	1.38	1.60	1.77	1.41
Complainant Credibility	<u>M</u>	4.13	4.44	5.73	5.36
	<u>sd</u>	1.42	1.74	1.59	1.35
Defendant Credibility	<u>M</u>	4.61	4.22	4.15	4.52
	<u>sd</u>	1.20	1.72	1.83	1.26

Note: CFNN = Conflicting No Nullification, CFEN = Conflicting Explicit Nullification, CCNN = Concurring No Nullification, CCEN = Concurring Explicit Nullification

Table 12 **Mean Ratings for Females on the One-Item Questionnaire
by Testimony by Nullification**

		<u>Condition</u>			
		<u>CFNN</u>	<u>CFEN</u>	<u>CCNN</u>	<u>CCEN</u>
Complainant Responsibility	<u>M</u>	3.21	3.00	1.65	2.71
	<u>sd</u>	1.26	1.47	0.75	1.35
Defendant Responsibility	<u>M</u>	4.93	5.11	6.73	6.77
	<u>sd</u>	1.03	1.60	0.45	1.45
Complainant Consent	<u>M</u>	3.97	3.41	2.23	3.03
	<u>sd</u>	1.15	1.65	1.48	1.25
Complainant Believability	<u>M</u>	4.55	5.04	6.42	6.10
	<u>sd</u>	1.35	1.79	1.30	1.38
Defendant Believability	<u>M</u>	3.52	3.48	3.19	4.55
	<u>sd</u>	1.24	1.87	2.04	1.95
Complainant Credibility	<u>M</u>	4.52	4.85	5.96	6.03
	<u>sd</u>	1.43	1.73	1.73	0.98
Defendant Credibility	<u>M</u>	3.66	4.04	3.77	4.58
	<u>sd</u>	1.42	1.48	2.16	1.67

Note: CFNN = Conflicting No Nullification, CFEN = Conflicting Explicit Nullification, CCNN = Concurring No Nullification, CCEN = Concurring Explicit Nullification

Table 13 **Mean Ratings on the One-Item Questionnaire**
by Testimony by Nullification

		<u>Condition</u>			
		<u>CFNN</u>	<u>CFEN</u>	<u>CCNN</u>	<u>CCEN</u>
Complainant Responsibility	<u>M</u>	3.38	3.28	2.15	3.05
	<u>sd</u>	1.50	1.64	1.45	1.38
Defendant Responsibility	<u>M</u>	4.38	4.78	6.40	5.73
	<u>sd</u>	1.35	1.80	1.26	1.26
Complainant Consent	<u>M</u>	4.19	3.80	2.77	3.38
	<u>sd</u>	1.17	1.55	1.65	1.21
Complainant Believability	<u>M</u>	4.27	4.72	6.33	5.86
	<u>sd</u>	1.48	1.72	1.08	1.27
Defendant Believability	<u>M</u>	3.92	3.69	3.56	4.48
	<u>sd</u>	1.37	1.74	1.90	1.72
Complainant Credibility	<u>M</u>	4.34	4.64	5.84	5.73
	<u>sd</u>	1.43	1.73	1.65	1.20
Defendant Credibility	<u>M</u>	4.08	4.13	3.96	4.55
	<u>sd</u>	1.40	1.59	1.99	1.49

Note: CFNN = Conflicting No Nullification, CFEN = Conflicting Explicit Nullification, CCNN = Concurring No Nullification, CCEN = Concurring Explicit Nullification

Table 14 **Correlations Between Pretested Variables and Verdicts,
Private Beliefs, and One-Item Questionnaire by Gender**

		<u>Crowne</u>	<u>SAS1</u>	<u>SAS2</u>	<u>Comp</u>	<u>ATW</u>	<u>Age</u>
PB1	M	.09	-.15	-.05	.09	.22*	-.07
	F	.08	-.10	-.20*	-.12	.35**	-.03
PB2	M	.11	-.20*	-.08	.07	.14	-.07
	F	.19*	-.14	-.22	-.10	.40**	.00
PB3	M	.13	-.16	-.18	-.04	.31**	-.02
	F	.16	-.13	-.07	-.10	.15	.07
PB4	M	.01	-.14	-.22*	.05	.07	-.03
	F	.16	-.20*	-.16	-.15	.12	.06
One1	M	-.06	.08	.08	-.08	-.16	.10
	F	-.11	.14	.22*	.11	-.21*	-.05
One2	M	.01	-.10	-.17	.06	.04	-.02
	F	.16	-.04	-.18	-.16	.37**	.01
One3	M	-.10	.13	.06	.00	-.11	.02
	F	-.13	.09	.26**	.10	-.24*	-.13
One4	M	.02	-.16	-.20*	.10	.16	-.01
	F	.20*	-.16	-.18	-.17	.39**	.04
One5	M	-.17	.04	-.05	-.11	-.23*	.02
	F	-.05	.09	.13	.12	-.14	-.02
One6	M	.12	-.27**	-.21*	.06	.13	-.06
	F	.14	-.14	-.11	-.04	.17	.07
One7	M	-.08	.04	.01	-.05	-.18	-.15
	F	-.03	-.02	.05	.00	-.15	-.10
Pre	M	.07	-.05	-.06	-.02	.33**	-.09
	F	.18	-.17	-.09	-.04	.17	-.04
Post	M	.09	-.17	-.16	.11	.14	-.14
	F	.18	-.19*	-.16	-.11	.09	.04

* < .05 ** < .01

Note: PB1 = private belief 1, PB2 = private belief 2, PB3 = private belief 3, PB4 = private belief 4, One1 = complainant responsibility, One2 = defendant responsibility, One3 = complainant consent, One4 = complainant believability, One5 = defendant believability, One6 = complainant credibility, One7 = defendant credibility, Pre = pre-deliberation verdict, Post = post-deliberation verdict, Crowne = Social Desirability, SAS1 = Social Appropriateness Scale 1, SAS2 = Social Appropriateness Scale 2, COMP = Compliance, ATW = Attitudes Towards Women, Age = juror age

Table 15 **Intercorrelations Among Private Beliefs, Juror Verdicts**
and Jurors' Attributions of Blame

		<u>One1</u>	<u>One2</u>	<u>One3</u>	<u>One4</u>	<u>One5</u>	<u>One6</u>	<u>One7</u>
PB1	M	-.34**	.35**	-.52**	.48**	-.25*	.46**	-.04
	F	-.39**	.55**	-.34**	.54**	-.16	.40**	-.03
PB2	M	-.32**	.48**	-.55**	.64**	-.32**	.58**	-.17
	F	-.45**	.63**	-.43**	.64**	-.16	.49**	.01
PB3	M	-.29**	.40**	-.50**	.60**	-.36**	.55**	-.21*
	F	-.45**	.60**	-.41**	.70**	-.25**	.57**	-.03
PB4	M	-.35**	.67**	-.43**	.76**	-.32**	.64**	-.25*
	F	-.42**	.66**	-.37**	.69**	-.24*	.54**	-.10
Pre	M	-.21*	.39**	-.41**	.52**	-.41**	.41**	-.29**
	F	-.31**	.55**	-.34**	.65**	-.27**	.46**	-.05
Post	M	-.32**	.54**	-.39**	.64**	-.21*	.54**	-.14
	F	-.51**	.63**	-.38**	.59**	-.15	.51**	-.03

* < .05 ** < .01

Note: PB1 = private belief 1, PB2 = private belief 2, PB3 = private belief 3, PB4 = private belief 4, Pre = pre-deliberation verdict, Post = post-deliberation verdict, One1 = complainant responsibility, One2 = defendant responsibility, One3 = complainant consent, One4 = complainant believability, One5 = defendant believability, One6 = complainant credibility, One7 = defendant credibility

Appendix A
Informed Consent Form

Informed Consent

Guideline

THE PURPOSE OF AN INFORMED CONSENT IS TO INSURE THAT YOU UNDERSTAND THE PURPOSE OF THE STUDY AND THE NATURE OF YOUR INVOLVEMENT. THE INFORMED CONSENT MUST PROVIDE SUFFICIENT INFORMATION SUCH THAT YOU HAVE THE OPPORTUNITY TO DETERMINE WHETHER YOU WISH TO PARTICIPATE IN THE STUDY.

Research Personnel

The following people are involved in this research project and may be contacted at any time: Bill Moore (Principle Investigator, 788-2600, ext. 2683) and Dr. W. Jones (Faculty Supervisor, 788-2600, ext. 2648). Should you have any ethical concerns about this study then please contact Dr. Lise Paquet (Chair, Department of Psychology Ethics Committee, 788-2600, ext. 2692) or Dr. W. Jones (Chair, Department of Psychology, 788-2600, ext. 2648).

The present study requires that you role-play the part of a juror in a simulated trial concerning sexual assault. The simulated trial will be presented in video format. All of the characters in the trial are played by actors and actresses who have volunteered their time and efforts to the study.

Before the trial begins, you will be required to fill out six questionnaires. You will be asked questions concerning social, sexual, and family behaviour. You will also be required to answer questions concerning how you relate to others.

During the trial you will also be required to fill out some questionnaires. After reviewing the trial proceedings, you will be asked to partake in the jury deliberation process. Your task as a jury will be to reach a unanimous decision concerning the guilt or innocence of the defendant. You will attempt to reach a decision during deliberations in which you and the other members of the jury discuss the case. The experimenter will not be present during the deliberations.

Very little is known about how juries reach their decisions because, by law, jury deliberations are held in secret, and justifications for jury verdicts are not demanded. In order to understand this process more fully, we would like to videotape your deliberations.

Upon completion of this you will be asked to give your individual perceptions and judgements about the trial. The entire procedure will last between 3-4 hours.

In order to make the trial as realistic as possible, the testimonies contain explicit details concerning the alleged assault. Some people may find such details upsetting. You are free to withdraw from the study at this point in time, or at any subsequent time, for any reason and you will not be penalized in any way.

I understand that I am completely free to withdraw at this point in time (without penalty) or at any subsequent time before, during, or after the jury deliberations. I understand that if I choose to withdraw, all videotapes for which consent has been withdrawn will be erased.

Furthermore, I am also aware that all of the data and the deliberation videotapes which are gathered will be kept completely confidential and anonymous with respect to my personal identity.

I have read the above form and with the understanding that I can withdraw at any time, I voluntarily consent to participate in this study.

Participants Name (please print) Participants Signature

Investigators Name Investigators Signature

Date

Appendix B

Pre-measures

Attitudes Toward Women Scale

Social Desirability Scale

Social Appropriateness Scale

Compliance Scale

Attitudes Toward Women

Please indicate your opinion about each statement by circling one response only; where; A = agree strongly, B = agree mildly, C = disagree mildly, & D = disagree strongly.

- | | | Agree
Strongly | | Disagree
Strongly |
|----|--|-------------------|---|----------------------|
| 1. | Swearing and obscenity are more repulsive in the speech of a woman than of a man. | A | B | C D |
| 2. | Women should take increasing responsibility for leadership in solving the intellectual and social problems of the day. | A | B | C D |
| 3. | Both husband and wife should be allowed the same grounds for divorce. | A | B | C D |
| 4. | Telling dirty jokes should be mostly a masculine prerogative. | A | B | C D |
| 5. | Intoxication among women is worse than intoxication among men. | A | B | C D |
| 6. | Under modern economic conditions with women being active outside the home, men should share in household tasks such as washing dishes and doing laundry. | A | B | C D |
| 7. | It is insulting to women to have the "obey" clause remain in the marriage service. | A | B | C D |
| 8. | There should be a strict merit system in job appointment and promotion without regard to sex. | A | B | C D |

		Agree Strongly		Disagree Strongly	
9.	A woman should be as free as a man to propose marriage.	A	B	C	D
10.	Women should worry less about their rights and more about becoming good wives and mothers.	A	B	C	D
11.	Women earning as much as their dates should bear equally the expense when they go out together.	A	B	C	D
12.	Women should assume their rightful place in business and all the professions along with men.	A	B	C	D
13.	A woman should not expect to go to exactly the same places or to have quite the same freedom of action as a man.	A	B	C	D
14.	Sons in a family should be given more encouragement to go to college than daughters.	A	B	C	D
15.	It is ridiculous for a woman to run a locomotive and for a man to darn socks.	A	B	C	D
16.	In general, the father should have greater authority than the mother in the bringing up of children.	A	B	C	D
17.	Women should be encouraged not to become sexually intimate with anyone before marriage, even their fiances.	A	B	C	D
18.	The husband should not be favoured by law over the wife in the disposal of family property or income.	A	B	C	D

		Agree Strongly		Disagree Strongly	
19.	Women should be concerned with their duties of childbearing and house tending, rather than with desires for professional and business careers.	A	B	C	D
20.	The intellectual leadership of a community should be largely in the hands of men.	A	B	C	D
21.	Economic and social freedom is worth far more to women than acceptance of the ideal of femininity which has been set up by men.	A	B	C	D
22.	On average, women should be regarded as less capable of contributing to economic production than are men.	A	B	C	D
23.	There are many jobs in which men should be given preference over women in being hired or promoted.	A	B	C	D
24.	Women should be given equal opportunity with men for apprenticeship in the various trades.	A	B	C	D
25.	The modern girl is entitled to the same freedom from regulation and control that is given to the modern boy.	A	B	C	D

Social Desirability

DIRECTIONS: Listed below are a number of statements concerning personal attitudes and traits. Read each item and decide whether the statement is true or false as it pertains to you personally. Circle the corresponding letter below the statement.

1. Before voting, I thoroughly investigate the qualifications of all the candidates.
T F
2. I never hesitate to go out of my way to help someone in trouble.
T F
3. It is sometimes hard for me to go on with my work if I am not encouraged.
T F
4. I have never intensely disliked anyone.
T F
5. On occasion I have had doubts about my ability to succeed in life.
T F
6. I sometimes feel resentful when I don't get my way.
T F
7. I am always careful about my manner of dress.
T F
8. My table manners at home are as good as when I eat out in a restaurant.
T F
9. If I could get into a movie without paying and be sure I wasn't seen, I would probably do it.
T F
10. On a few occasions, I have given up doing something because I thought too little of my ability.
T F

11. I like to gossip at times.
T F
12. There have been times when I felt like rebelling against people in authority even though I knew they were right.
T F
13. No matter who I'm talking to, I'm always a good listener.
T F
14. I can remember "playing sick" to get out of something.
T F
15. There have been occasions when I took advantage of someone.
T F
16. I'm always willing to admit it when I make a mistake.
T F
17. I always try to practice what I preach.
T F
18. I don't find it particularly difficult to get along with loud-mouthed, obnoxious people.
T F
19. I sometimes try to get even, rather than forgive and forget.
T F
20. When I don't know something, I don't at all mind admitting it.
T F
21. I am always courteous, even to people who are disagreeable.
T F
22. At times I have really insisted on having things my way.
T F
23. There have been occasions when I felt like smashing things.
T F
24. I would never think of letting someone else be punished for my wrong doings.
T F

25. I never resent being asked to return a favour.
T F
26. I have never been irked when people expressed ideas very different from my own.
T F
27. I never make a long trip without checking the safety of my car.
T F
28. There have been times when I was quite jealous of the good fortune of others.
T F
29. I have almost never felt the urge to tell someone off.
T F
30. I am sometimes irritated by people who ask favours of me.
T F
31. I have never felt that I was punished without cause.
T F
32. I sometimes think when people have a misfortune they only got what they deserved.
T F
33. I have never deliberately said something that hurt someone's feelings.
T F

Social Appropriateness Scale

Rate each question according to the extent to which it applies to you. You may circle any number you want ranging from 0 (the statement does not apply to me at all) to 5 (the statement is extremely applicable to me).

	not at all					extremely
I tend to show different sides of myself to different people.	0	1	2	3	4	5
It is my feeling that if everyone else in a group is behaving in a certain manner, this must be the appropriate way to behave.	0	1	2	3	4	5
I actively avoid wearing clothes that are not in style.	0	1	2	3	4	5
In different situation and with different people, I often act like very different persons.	0	1	2	3	4	5
At parties I usually try to behave in a manner that makes me fit in.	0	1	2	3	4	5
When I am uncertain about how to act in a social situation, I look to the behavior of others for cues.	0	1	2	3	4	5
Although I know myself, I find that others do not know me.	0	1	2	3	4	5
I try to pay attention to the reactions of others to my behavior in order to avoid being out of place.	0	1	2	3	4	5
I find that I tend to pick up my slang expressions from others and use them as part of my own vocabulary.	0	1	2	3	4	5
Different situations can make me behave like very different people.	0	1	2	3	4	5

	not at all					extremely
I tend to pay attention to what others are wearing.	0	1	2	3	4	5
The slightest look of disapproval in the eyes of a person with whom I am interacting is enough to make me change my approach.	0	1	2	3	4	5
Different people tend to have different impressions about the type of person I am.	0	1	2	3	4	5
It's important to me to fit into the group I'm with.	0	1	2	3	4	5
My behavior often depends on how I feel others wish me to behave.	0	1	2	3	4	5
I am not always the person I appear to be.	0	1	2	3	4	5
I usually keep up with clothing style changes by watching what others wear.	0	1	2	3	4	5
I sometimes have the feeling that people don't know who I really am.	0	1	2	3	4	5
When in a social situation, I tend not to follow the crowd, but instead, behave in a manner that suits my particular mood at the time.	0	1	2	3	4	5

Compliance Scale

Please respond to each question below by circling a True (T) or False (F).

1.	I give in easily to people when I am pressured.	T	F
2.	I find it very difficult to tell people when I disagree with them.	T	F
3.	People in authority make me feel uncomfortable and uneasy.	T	F
4.	I tend to give in to people who insist that they are right.	T	F
5.	I tend to become easily alarmed and frightened when I am in the company of people in authority.	T	F
6.	I try very hard not to offend people in authority.	T	F
7.	I would describe myself as a very obedient person.	T	F
8.	I tend to go along with what people tell me even when I know that they are wrong.	T	F
9.	I believe in avoiding rather than facing demanding and frightening situations.	T	F
10.	I try to please others.	T	F
11.	Disagreeing with people often takes more time than it is worth.	T	F
12.	I generally believe in doing as I am told.	T	F
13.	When I am uncertain about things I tend to accept what people tell me.	T	F
14.	I generally try to avoid confrontation with people.	T	F
15.	As a child I always did what my parents told me.	T	F
16.	I try hard to do what is expected of me.	T	F

17.	I am not too concerned about what people think of me.	T	F
18.	I strongly resist being pressured to do things I don't want to do.	T	F
19.	I would never go along with what people tell me in order to please them.	T	F
20.	When I was a child I sometimes took the blame for things I had not done.	T	F

Appendix C
Private Belief Scale

PRIVATE BELIEF

The scale below assesses your private and personal belief about whether you think that Mr. Gavin sexually assaulted Miss Tims. This scale is not asking you whether you believe that the evidence is sufficient to find Mr. Gavin guilty in a court of law. Instead, it is simply asking you for your personal opinion concerning whether or not Mr. Gavin sexually assaulted Miss Tims.

-5	-4	-3	-2	-1	0	+1	+2	+3	+4	+5
Certain the defendant is NOT GUILTY					Unsure		Certain the defendant is GUILTY			

Appendix D

Individual Juror Verdict Ballot Form

INDIVIDUAL BALLOT FORM

NAME: _____

BALLOT #: ____ (e.g., 1st, 2nd)

My vote is that the defendant, Mr. Gavin, is:

Guilty _____

Not Guilty _____

Please choose only one option.

Appendix E

Post-Measures

Personal Data Questionnaire

One-Item Questionnaire

PERSONAL DATA SHEET

Name _____

Gender _____

Age _____

ONE-ITEM QUESTIONNAIRE

1 = Not at all; 4 = moderately; 7 = completely

1.	To what extent do you believe the complainant was responsible for the events in this case?	1 2 3 4 5 6 7
2.	To what extent do you believe the defendant was responsible for the events in this case?	1 2 3 4 5 6 7
3.	To what extent did the complainant consent to the events in this case?	1 2 3 4 5 6 7
4.	To what extent do you believe the complainant's testimony?	1 2 3 4 5 6 7
5.	To what extent do you believe the defendant's testimony?	1 2 3 4 5 6 7
6.	To what extent do you feel that the complainant is a credible witness?	1 2 3 4 5 6 7
7.	To what extent do you feel that the defendant is a credible witness?	1 2 3 4 5 6 7

2 of/de 2

PM-1 3 1/4"x4" PHOTOGRAPHIC MICROCOPY TARGET
NBS 1010a ANSI/ISO #2 EQUIVALENT

PRECISIONSM RESOLUTION TARGETS

Appendix F
Debriefing Form

DEBRIEFING INFORMATION

We would like to thank you for participating in this study. Your participation will help us understand more about how jurors make decisions in trials involving sexual assault and will offer a new contribution to this field. This study and others like it assist those individuals who are involved in sexual assault litigation.

We would like to emphasize that sexual assault is a serious and violent crime, punishable by many years in prison. Rape victims suffer severe psychological trauma as well as the more obvious physical effects of the assault. Unfortunately, many people still believe a number of falsehoods or myths about rape. It is important to recognize that sexual assault occurs in many different contexts. An assault may occur in an isolated location (e.g., a car, park, alleyway), in the perpetrators home, or in the victims home. It is also important to acknowledge that relationships between the victim of a sexual assault and the offender are varied. For example, rapists may be a stranger, a friend, or their victims date. The location of a rape and the prior relationship status between an offender and his victim in NO WAY minimizes how responsible an offender is for the rape. Under no circumstances should a woman be blamed for being raped. We'd like to stress that women are not responsible for being raped, rather they are the victims of a brutal crime.

Another misconception many people believe is that if a woman does not immediately report a rape or hesitates to report a rape that she was not raped at all. This belief is false. There are many reasons that make it difficult for a woman to report a rape (e.g., reactions of others, psychological trauma experienced from the assault). In fact, many women who are the victims of rape never report the assault to authorities.

The purpose of the study in which you have just participated is to investigate different factors which may influence the decisions that jurors make in sexual assault trials. In this study the judicial instructions and the type and amount of evidence were manipulated. We wanted to determine if changes in these independent variables affected the dependent variable, jury verdicts. Past research using the jury simulation paradigm has shown that jury verdicts vary as a function of the amount of evidence presented at trial and the composition of certain judicial instructions. Research also indicates that extralegal variables (e.g., demeanor of the complainant and defendant, juror gender, age of the complainant, etc.) influence jury decisions.

There are a couple of discrepancies between the procedure used in this study and the procedure used in actual criminal trials. In this study ALL mock jurors who agreed to take part in the study sat on the jury. However, in actual trials, potential jurors would be questioned by the Defense and Crown attorneys before the trial proceedings. This process is called the *jury selection procedure* and all individuals who arrive for jury duty are not selected to sit on the jury. Another difference between the procedure used in this study and actual criminal trials is the artificial time limit placed on the deliberations. In actual trials, the length of the deliberations are not limited. However, the literature indicates that the majority of juries that try cases involving charges of sexual assault reach a verdict within 90 minutes.

We appreciate your taking the time to answer the questions and want to stress that our intent is to understand your beliefs; consequently, all your answers are valuable. Also, please note that the trial presented to you on videotape is a completely simulated trial; that is, it is a totally fictional scenario. Furthermore, all of the characters were actors and actresses who volunteered their time and efforts to this project.

The forms of social violence depicted in this study receive the concern and commitment of Carleton University so that a better understanding about violence against women and sexual assault may be achieved.

We understand that the scenarios may be upsetting and anxiety provoking for some people and we stress that you contact myself or one of the agencies listed below if you have any concerns regarding this study or the issues referred to in this study. This list of contacts includes agencies within both the university and the community that are available for men and women.

Due to the nature of this research, we ask you not to discuss the subject matter with potential participants until testing is complete (approximately April of 1995). If you wish to discuss any additional aspects of the research we are available for appointments. You may contact **Bill Moore** in room A304 Loeb or by phoning 788-2600, ext. 2683.

If you have any questions and/or ethical concerns regarding this experiment, you may also contact any or all of the following faculty members:

Dr. L. Paquet, 788-2600, ext. 2692	(Chair, Department of Psychology Ethics Committee)
Dr. W. Jones, 788-2600, ext. 2648	(Chair, Psychology Department)

CONTACT SHEET

Police Phone Numbers

Emergency 911		Victim Assistance Program
Ottawa	230-6211	235-0311 ext:367
Nepean	829-2211	829-2211 ext:242
Kanata	592-6061	
Gloucester	822-2961	822-2961 ext:223
O.P.P.	828-9171	

24 Hour Distress Lines

Distress Center	236-3311
Salvation Army Crisis Center	236-7977
Rape Crisis Line	729-8889
Sexual Assault Center	234-2266
Alcoholics Anonymous	523-2116

Individual Family Counselling

Catholic Family Center	Family Service Center
200 Isabella St. 4 floor	119 Ross St. 2 floor
Ottawa 233-8478	Ottawa 725-3801
sliding pay scale	sliding pay scale
French and English	English

Divorce and Custody Mediation

Catholic Family Services	233-8478
Family Service Center	725-3601
Family Court Clinic	236-3893
Family and Divorce Mediation	233-4926

Legal Help

Community Legal Services	238-7008
Legal assistance for low income families with problems related to housing; the landlord and tenants act.	

Legal Aid

Legal assistance to low income individuals who need help with criminal matters	238-7931
University Of Ottawa Canadian Legal Aid Society	564-5855

Ottawa Law Information Line 236-3893
Referral to appropriate services

Help For Victims Of Sexual Abuse And Their Families

Family Service Center:	Lorna Erikson	725-3601
	Pauline Barrett	
The Sexual Assault Support Center		234-2266
Children's Hospital of Eastern Ontario		
	Jim McGregor	737-2360
Children's Aid Society		737-1700

Services For 'Battered' Women

If you need to talk:		
English: Gloucester Services for Abused Women		745-4818
Interval House		234-5181
Lanark County Interval House		1-800-267-7946
French: Services De Gloucester		745-3665
La Presence		223-8297
Maison d'Amitie		747-0020

Temporary Refuges For Women And Children

Interval House	234-5181
Lanark Count Interval House	1-800-267-7946
Maison d'Amitie	747-0020
La Presence	223-8297

Counselling Services

Some community centres provide individual counselling and a variety of support groups and programs. Just call the center closest to you and ask to speak to a counsellor.

Pinecrest Queensway Community Center	820-4922
Dalhousie Community Center	238-8210
Ottawa S.E. Community Center	521-1023
Lower Town Community Center	238-1784
Vanier Community Center	744-2892
Gloucester Community Center	744-6025
Overbrook-Forbes Community Center	745-0073

Counselling Services For Men

New Directions	238-8478
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Appendix G
Concurring Testimony

WEAK EVIDENCE

JUDGE'S OPENING STATEMENT

Ladies and gentlemen of the jury, in the trial you will hear today the Crown has charged Mr. James Gavin with the sexual assault of Miss Janet Tims. During the trial you will see presentations of the case by both the Crown and Defense. The trial will begin with opening statements, first by the prosecuting attorney and then by the defence attorney. Following these opening statements you will observe the testimony of a series of witnesses called by the prosecution. Each of these witnesses will first be examined by the Crown attorney and then cross-examined by the Defense attorney. After the prosecution has completed presenting its case, you will see the witnesses called by the Defense. Each of these witnesses will first be examined by the Defense attorney and then cross-examined by the attorney for the prosecution.

Members of the Jury, in our legal system a defendant is presumed to be innocent until a jury of his peers hears all of the relevant evidence, deliberates on this evidence and then finds him guilty beyond a reasonable doubt. Therefore, it is very important that you keep an open mind throughout the whole trial and do not make a decision in this case prematurely. You will have ample time to carefully weigh the evidence and deliberate to a verdict after all of the evidence has been presented to you. It is important that you do not prematurely reach a verdict before this time.

Ladies and gentlemen of the Jury, sexual assault is defined in the Canadian Criminal Code as follows: A person commits a sexual assault when, without the consent of another person, he applies force to the other person directly or indirectly. This definition applies to all forms of assault including sexual assault. In other words, sexual assault means forcing a person to engage against that person's will in sexual activity.

Members of the Jury, let me caution you once again that the defendant is presumed innocent of the charges against him, and that you are to listen to all of the evidence with an open mind. You will have ample opportunity to deliberate on the evidence and to reach your conclusions after all of the evidence has been presented to you. The Crown attorney will now present his opening statement.

OPENING STATEMENT PROSECUTION

Ladies and gentlemen of the jury, the case before you is really quite straightforward. The prosecution will prove beyond a reasonable doubt that, on April 10, 1993, Mr. James Gavin sexually assaulted Miss Janet Tims. Now, the average person often believes that rapists are fiends who look and act abnormal and who prey on women who are total strangers to them. In fact, rapists usually look like anyone

else. They come from all strata of society and they cannot be distinguished by their looks or manner. Furthermore, most rapists know their victims. In fact, many more women are raped by acquaintances than by strangers. When James Gavin sexually assaulted Janet Tims the two were not strangers. In fact, both were University students who were on their second date. The prosecution concedes that, Miss Tims had been sexually intimate with Mr. Gavin on their first date, and that on the evening of the sexual assault Miss Tims and Mr. Gavin returned from a date to Miss Tims' apartment. You will hear Miss Tims testify that she invited Mr. Gavin in for tea and that the two of them sat down on Miss Tims' living room couch. Miss Tims will testify that she liked Mr. Gavin, and did not resist when he began to kiss and hug her. However, when Mr. Gavin attempted to take further liberties by removing Miss Tims' panties, Miss Tims protested. Members of the jury, sexual assault means sexual activity. Sexual intercourse is not voluntary when it is performed on a person who protests the intercourse and who tries to fight off their attacker. Sexual intercourse that is forced on a woman is sexual assault. The fact that a man and woman had consensual sex on an earlier occasion does not give that man a right to force himself sexually on that woman on a later occasion. Ladies and gentlemen, listen very carefully as Miss Tims describes how she repeatedly pleaded with Mr. Gavin to stop his sexual advances and leave her alone. Listen as she describes how she hit Mr. Gavin with her fists in an attempt to get him to stop, how she tried to push him away and fight him off, how he pinned her to the couch, forced his knee between her legs, and then forced her against her will and while she protested violently, to have sexual intercourse.

Members of the Jury, Miss Tims is not the only one who will testify about Mr. Gavin having sex with her despite her protests. When Mr. Gavin was arrested he was asked by the police if he had sex with Miss Tims while ignoring her protests. Listen as Officer O'Malley, the arresting officer testifies how Mr. Gavin stated that he continued to press his sexual advances on Miss Tims even after she repeatedly asked him to stop.

Members of the jury, a woman's body belongs to her and to her alone. A woman never owes sex to anyone, and she has a right to stop sexual activity whenever she wishes by saying no. No means no. When Mr. Gavin went too far Miss Tims said No. She said no clearly, repeatedly and unambiguously. She said No both verbally and also by trying to fight Mr. Gavin off. However, Mr. Gavin ignored Miss Tims' protests. Despite them he sexually assaulted her and, for that reason I ask you to find him guilty of sexual assault.

Ladies and Gentlemen of the jury, it is sometimes said that a man cannot rape a woman against her will, or that a woman who was not badly beaten was not really raped. Both of those statements are nonsense. Mr. Gavin is 6 feet tall and weighs 200 pounds. Miss Tims is only 5 feet 4 inches tall and weighs only 112. pounds. Obviously, a 6 foot man can easily overpower a woman of Miss Tims size despite her protests, and without beating her up. The law does not require that a woman be beaten in order to be sexually assaulted. All that is required is that the woman be forced against her will to engage in sexual acts. The prosecution will show that Mr.

Gavin forced Miss Tims against her will to have sexual intercourse and for this reason I ask you to find Mr. Gavin guilty of sexual assault.

Thank you for your attention.

OPENING STATEMENT DEFENCE

Ladies and gentlemen of the jury, my client Mr. James Gavin, freely admits that he engaged in sexual intercourse with Janet Tims on the evening of April, 10, 1993. But Mr. Gavin did not sexually assault Miss Tims. Mr. Gavin is a graduate student in computer science. Before this unfortunate incident he had never been in trouble with the law. This is not the kind of person who rapes women. How then did his present troubles come about? Ladies and Gentlemen both Mr. Gavin and Miss Tims will describe for you how they met in school, liked one another, and had two dates together. Listen carefully as Mr. Gavin describes how both of them enjoyed themselves on their first date, and how at the end of the evening Miss Tims invited Mr. Gavin into her apartment, made love to him, and agreed to meet him for a second date the very next day. Mr. Gavin will further describe how, on the next day they went for a study date to the library and how after they were finished studying they drank beer at a pub and then went back to Miss Tims' apartment. Members of the Jury, Mr. Gavin did not force himself into Miss Tims' apartment following either of their dates, and he did not force her to sit with him on the couch and begin kissing and hugging. Miss Tims then went on to have sexual intercourse with Mr. Gavin both on their first date and then again on their second date.

Listen carefully as Mr. Gavin describes how, after their second date it was Miss Tims who invited him inside and how Miss Tims voluntarily joined him on the couch. Notice how he will describe that Miss Tims was very receptive to his kisses and embraces, and how she passionately and repeatedly kissed him back. Listen carefully as he describes how both he and Miss Tims became increasingly more sexually aroused, and how Miss Tims encouraged him by continuing to kiss him and rub against him.

Members of the jury, the prosecution has told you that when a woman says no to a man's advances she means no and that's all there is to it. Members of the jury if only that were true life would be much simpler for us all. However, ladies and gentlemen we all know that, in real life No does not always mean no. Sometimes, when a man and woman are becoming intimate, the situation is complex and ambiguous and the woman's feelings are mixed. Sometimes, a woman likes a man, enjoys his caresses and wants him to continue, but at the same time she may have moral qualms, or believe that if she doesn't protest to at least some degree then it will mean that she is cheap or easy. Under circumstances such as these No may not mean No. Instead, it may mean maybe, or I'm not sure, or it may even mean yes, but only after I've protested so you won't think I'm cheap, or so I can assuage my own conscience. Members of the jury, during the time the Miss Tims and Mr. Gavin were in passionate embrace on her couch Miss Tims said No to Mr. Gavin's further

advances. But what did she really mean by her No? Ladies and gentlemen listen carefully as Mr. Gavin describes how he began to stroke Miss Tims' breasts. When he did so Miss Tims pushed his hand away several times. Was Miss Tims really saying No when she pushed his hand away? If she had been we would expect that Miss Tims would have also stopped kissing Mr. Gavin, pulled away, sat up and told him firmly and explicitly that their lovemaking had ended. But that is not what Miss Tims did. As Mr. Gavin will testify, what Miss Tims did is to continue to kiss him passionately, and rub her body against his even as she pushed his hand from her breast. Furthermore, when Mr. Gavin persisted in stroking Miss Tims' breasts, Miss Tims stopped pushing his hand away and, continued to kiss Mr. Gavin. Later she allowed Mr. Gavin to unbutton her blouse without protest and while she continued to kiss him. She also allowed Mr. Gavin to undo her bra without protest. When Mr. Gavin pushed her bra away and stroked Miss Tims' naked breasts she protested by saying "Oh Jim maybe we should stop." However, she made no attempt to push him away and in fact continued to kiss him and rub her body against his as she allowed him to caress her naked breasts. Members of the jury, this is not the way that one says no to sex. Of course Mr. Gavin continued his sexual advances toward Miss Tims. What healthy, red blooded, heterosexual man wouldn't continue making sexual advances toward an attractive, sexually aroused woman who continued to kiss him passionately while making token gestures like pushing his hand away, or moaning no when what she really meant was yes, continue.

Can a woman be raped against her will? Of course she can. On the other hand if, as Miss Tims will testify, she tried her best to fight off Mr. Gavin, why were neither of them hurt? A physician who examined Miss Tims immediately after she talked with the police will testify that she was not beaten or bruised. A woman may not be as strong as a man but, certainly a woman is capable of defending herself by biting, kicking and scratching at a man who attacks her. However, the doctor who examined Mr. Gavin will testify that he had no marks on his body to indicate that he had engaged in a physical struggle. In short, ladies and gentlemen there is no evidence that indicates that Mr. Gavin forced Miss Tims to engage in sex with him against her will. On the contrary, the evidence indicates that Miss Tims voluntarily made passionate love with my client and that her protests were token gestures made to assuage her own guilt and to give the impression of not being cheap. Mr. Gavin did not sexually assault Miss Tims. For that reason ladies and gentlemen I ask that you find him not guilty.

Thank you.

DIRECT EXAMINATION OF OFFICER PAT O'MALLEY

P. Officer O'Malley please describe your involvement with this case.

O. My partner and I were cruising in the vicinity of Miss Tims' apartment when we

received a radio call of a sexual assault complaint for her address. We drove to the address and Miss Tims let us in. She told us that she had been raped by her date and named him as Mr. James Gavin.

She reported that she and Mr. Gavin had come back to her place after their date. She also stated that he and she began kissing on the couch, but that when she asked him to stop, he ignored her and continued making sexual advances toward her. She stated that she pleaded for him to stop and tried unsuccessfully to fight him off. However, she stated that he was too strong for her and that he forced himself on her having sexual intercourse with her against her will.

P. How did Miss Tims appear to you as she described these events?

O. Her eyes were swollen and red from crying, and she was agitated and upset as she related her story.

P. What happened next?

O. I stayed with Miss Tims while my partner called an ambulance. Once the ambulance took her away my partner and I went to Mr. Gavin's address, read him his rights and arrested him for sexual assault.

P. How did Mr. Gavin react to his arrest?

O. He admitted that he had sexual intercourse with Miss Tims earlier that evening but denied that he had assaulted her. Instead, he claimed that the intercourse was consensual, and that he had also had sex with her the day before. I then asked him if it were true that he continued to press his sexual advances on Miss Tims even after she had asked him several times to stop and to leave her alone. He admitted that Miss Tims had asked him to stop, but claimed that she hadn't really meant it. I asked him if Miss Tims has tried to push him away or to physically resist his advances in any way. He said that she had pushed him and hit him while asking him to stop, but that these were only token gestures and that she really wanted him to continue. After that Mr. Gavin refused to answer further questions until he had consulted a lawyer.

P. Thank you officer O'Malley. I have no further questions for this witness.

CROSS-EXAMINATION OF OFFICER O'MALLEY

D. Officer O'Malley when you asked Miss Tims what happened she stated that she invited Mr. Gavin into her apartment, sat with him on the couch and allowed him to kiss her, is that correct?

O. Yes.

D. And she reported that this kissing with Mr. Gavin was voluntary and of her own free will, is that right?

O. Yes.

D. Did she also tell you that she continued to kiss Mr. Gavin even while she pushed his hand away from her breast.

O. Yes.

D. In other words, she told you that she pushed him away, but at the same time kept encouraging him by continuing to kiss him, is that right?

O. She said that she did that at first, but that when he tried to take her panties off she stopped kissing him and told him to stop.

D. Tell me officer O'Malley, when you arrested Mr. Gavin did he deny that he had had sexual intercourse with Miss Tims?

O. No, he admitted having intercourse with her.

D. He didn't hedge or try to lie about it. He told you straight out when you asked him that he had sex with Miss Tims is that right?

O. Yes. He said from the beginning that he had sex with Miss Tims.

D. In your experience do rapists usually confess to sex with their victims as soon as you ask them, or do they often deny it.

O. Frequently they deny it.

D. But Mr. Gavin never denied having sex with Miss Tims did he.

D. No.

D. Did Mr. Gavin also tell you right from the beginning that Miss Tims gave him mixed messages, and that he believed that she wanted him to have sex with her?

O. Yes.

D. In other words, Mr. Gavin told you a consistent story right from the beginning

and never tried to deny having sex with Miss Tims, is that right?

O. Yes.

D. Thank you officer O'Malley. No further questions your Honour.

DIRECT EXAMINATION OF COMPLAINANT

P. Miss Tims will you please give the Court your name, address, age and occupation.

C. My name is Janet Tims, I'm 22 years old and live 22 Sycamore Drive in Ottawa. I'm a third year student majoring in English Literature at Ottawa University.

P. Miss Tims, do you know the defendant in this case, Mr. James Gavin?

C. Yes, he's sitting right over there at the defence table. He's the man who raped me.

P. In your own words, please tell the Court how you first met Mr. Gavin.

C. Well, about two weeks before the night Mr. Gavin raped me I was sitting in the Cafeteria in school having lunch with some friends. Mr. Gavin was an acquaintance of one of my friends, and he came over to our table and joined us. After a while, he began talking to me. I liked him at the time. He was bright and witty, and we stayed and talked for about half an hour after the others had left.

P. What did you talk about?

C. Just casual things. School, the courses we were each taking, things like that.

P. Did you discuss any intimate or personal topics.

C. No.

P. Then what happened.

C. Well, Mr. Gavin said he had to get to class, but before he left he asked if I'd like to go to dinner with him.

P. And how did you respond?

C. I said sure, I'd like to go, and I gave him my phone number so he could call me to make the arrangements.

P. And did he call you?

C. Yes. A couple of nights later he called and asked if I'd like to go to dinner on Friday. I said that I would, so that Friday evening we went out to an Italian restaurant.

P. How did you get to the restaurant?

C. Mr. Gavin picked me up at my apartment with his car and drove us.

P. When he came to pick you up did he come into your apartment?

C. No. He just rang the buzzer and I came down and met him at the front door.

P. Who paid for the dinner?

C. Mr. Gavin paid. I offered to chip in, but he said that he would like to pay.

P. What did you talk about at dinner?

C. Just the usual casual kind of stuff. I talked about what I was majoring in and the kind of job I'd like after I graduated, and he talked about the same kind of stuff.

P. Did you talk about any more personal or intimate topics?

C. No, not really. I mentioned how someday I would like to get married and start a family, and he said that someday he would like to do the same, but that's about as personal as the conversation became.

P. Did you have anything to drink at dinner?

C. Yes. In fact I had too much to drink. I liked Mr. Gavin. He seemed nice and I was nervous and wanted to make a good impression, so I had a couple of glasses of wine to calm myself down. Mr. Gavin kept filling my glass up again and, I guess because I wanted to make a good impression and appear sophisticated I kept drinking. By the time we left the restaurant I was pretty wobbly on my feet.

P. What happened after you left the restaurant?

C. Mr. Gavin drove me home and parked the car and then started kissing me in the

car. I was pretty drunk so I was much less inhibited than I would have normally been. Also I liked him and wanted to get to know him better, and didn't want to disappoint him, so I began to kiss him and make out with him in the car. When he started to undo my blouse I said that I thought we should stop because someone might see us. He then suggested that we go up to my apartment. At first I said no, but he seemed disappointed at that, and so I said OK as long as he only stayed for a little while. Once we got up to my apartment he began kissing me again and taking my clothes off. Even though I was drunk I knew that I shouldn't let him continue. I mean I really liked him and wanted to see him again, but I hardly knew him. I really felt mixed up inside. I wanted to stop him, but at the same time I didn't. I was afraid that if I stopped him after already going as far as I had he would be mad. I guess because of all I had had to drink I really wasn't thinking straight. At any rate, because of my mixed feelings I didn't do anything. I just let him continue and he went ahead and had sex with me. Later he left and went home.

P. When did you see Mr. Gavin again?

C. Both of us had exams coming up so we made a date to go study together at the library the next night.

P. When did you make this date?

C. In my apartment after we had finished having sex

P. And the date was for when exactly?

C. The next evening. Saturday, April 10.

P. And what happened on this date?

C. We met at the library at about 5 Saturday evening and studied together for a couple of hours. Around 7:30 we took a break and went to a restaurant close by for hamburgers. Then we went back to the library and studied till about 10 o'clock. By that time we were both pretty tired of studying and decided to go to the pub. We spent about half an hour in the pub, and then Mr. Gavin drove me home.

P. Did you have anything to drink in the pub?

C. Yes, we each had a beer.

P. You had only one beer?

C. Yes. Only one.

P. What happened after Mr. Gavin drove you home?

C. I invited him to come up to my apartment for a cup of tea. I was sober this time so I felt I had more control over myself than the night before. Also I wanted to talk with Mr. Gavin about what had happened and about how I had let things go further than I should have. I mean, I wanted to go on seeing him and everything, but I wanted him to know that I wanted more than just a sexual relationship. I also wanted to know that he liked me for myself and not just because I had given him sex. He said he'd love to so we went up. Mr. Gavin went into the living room and sat on the couch and I went into the kitchen and made us each a cup of tea. Then I went into the living room and joined Mr. Gavin on the couch.

P. Then what?

C. Mr. Gavin leaned over and started kissing me and playing with my hair. At first we just kind of cuddled and kissed and I enjoyed that because I liked Mr. Gavin. After a few minutes I noticed that Mr. Gavin began breathing more heavily and then he began stroking and squeezing my breasts. After what had happened the night before I wasn't ready to get sexually involved so soon, so I pushed his hand aside. But after a few minutes he began stroking my breasts again. I pushed his hand away a few times but he kept coming back to stroke my breasts. After a while I just stopped pushing his hand away and let him stroke my breasts. I mean I knew I wasn't ready to have intercourse with him again, but I didn't want to reject him or give him the idea that I didn't like him. Besides I liked kissing him and having him stroke my breasts, it felt nice and made me feel close to him. Then he undid my blouse and bra and began feeling my breasts under my bra. I was starting to get more and more aroused and I knew that he was to, because his breathing was getting heavier. I was starting to have mixed feeling again. I liked what he was doing and didn't want him to stop, but I knew that if I didn't stop him soon he would want to go all the way, and I didn't want that to happen again. After he had fondled my breast for a while he slipped his hand under my skirt. At first I let him rub me down there, but then he started to take my panties off. I knew I didn't want to go that far, so I stopped kissing him and told him to stop. He kept trying to get his hands inside my panties, so I tried to twist out of his grasp, and kept telling him to please stop. When he continued despite my protests I began to get upset and scared. I tried to pull away from him, but he was very strong and I couldn't get out of his grasp. I pushed at him and tried to hit at his shoulders but I couldn't get away. He had me pinned against the couch. He held me down with his body and one hand and then with his free hand he took off my panties. By this time I was terrified and crying. I kept telling him to please stop and to leave me alone but he wouldn't listen. He undid his pants with his free hand and then forced himself between my legs. I tried to hold my legs together, but he got his knee between my thighs and forced them open. Then he got in between and had sex with me. After he was finished he got off me and got dressed. Then he told me to relax and tried to get me to calm down. He tried to hug me again, but I

was hysterical and told him to leave me alone and to go away. Then he left my apartment.

P. Then what happened?

C. Once he was out of the apartment I rushed to the door and locked it. I was terrified that he might come back. I was dazed and shaking and I couldn't stop crying. For about half an hour I just curled up on the living room rug and cried. Finally, after I got some control over myself I called the police and told them that Mr. Gavin had raped me.

P. Miss Tims, from the time Mr. Gavin started trying to get your panties off till the time he had finished forcing you to have intercourse, did you do anything to give him the impression that you wanted him to continue his advances?

C. No absolutely not. I was crying and hysterical. I kept screaming for him to stop. I hit him as hard as I could and tried to twist away but he just wouldn't stop no matter what I did.

P. Was there any doubt in your mind that Mr. Gavin knew you wanted to stop.

C. No doubt at all. He had to know. I mean I was punching him and twisting to try and keep his hand from getting my panties off, and when he tried to force his knee between my thighs I tried to cross my legs to keep him out, but he was just too strong for me, and no matter how much I pleaded and cried he wouldn't listen and wouldn't stop.

P. Thank you Miss Tims. No further questions your Honour.

CROSS-EXAMINATION OF COMPLAINANT

D. Miss Tims, lets go back to that day in the school cafeteria when you first met Mr. Gavin. Now, you stayed and talked with him for a half hour after everyone else had left, is that right?

C. Yes.

D. In fact, you described him as being witty, and bright and as liking him, didn't you?

C. Yes.

D. Well, If you liked him, did you want him to like you as well?

C. Yes.

D. Well then, in the cafeteria, did you do or say things to give Mr. Gavin the impression that you were attracted to him?

C. Well I was polite and interested in what he said, and paid attention to him, if that's what you mean.

D. I mean, isn't it true that you said and did things in the hopes that Mr. Gavin would like you enough to want to see you again?

C. Yes. I wanted to see him again. At first I liked him.

D. And then again during your first date at the restaurant, didn't you do and say things to give Mr. Gavin the impression that you enjoyed dating him, and would like to see him again?

C. Yes.

D. And on your very first date with Mr. Gavin you voluntarily kissed with him in his car and then voluntarily invited him into your apartment and then voluntarily had sexual intercourse with him, is that right?

C. I knew I shouldn't have slept with him so soon but, yes, I did.

D. And on your library date as well, didn't you go to the library so that you could be with Mr. Gavin in the hopes that he would keep liking you and being attracted to you?

C. I went to the library with him because I liked him, and yes, at that point I wanted him to like me, and keep on seeing me.

D. At the time you met Mr. Gavin were you dating anyone else?

C. No.

D. Had you dated anyone seriously in the few months before you met Mr. Gavin?

C. No. No one seriously.

D. Miss Tims, on your restaurant date with Mr. Gavin you mentioned that you

wanted to marry and have a family, is that right?

C. I said that someday in the future I would like to marry and have a family.

D. Were you pleased when Mr. Gavin said that he wanted the same things for himself.

C. I guess so. It indicated that we were compatible in that respect.

D. At anytime during your dates with Mr. Gavin did you hope that your relationship might become serious?

C. I liked him, but it was to early to think about getting serious. I only saw him a couple of times.

D. Miss Tims, it might have been to early in the relationship to actually verbalize to Mr. Gavin that you were serious, but it wasn't to early to think that he was someone that you could get serious about. So let me ask you again. did you at any time think that Mr. Gavin was someone you could have gotten serious about.

C. Yes.

D. After you had sex with Mr. Gavin on your first date you saw him the very next evening for a date at the library, is that right?

C. Yes.

D. And after studying at the library with Mr. Gavin for several hours, and having hamburgers together, you went with him to a pub and had drinks is that right?

C. We went to the pub and he bought me a beer, that's right.

D. And after that Mr. Gavin drove you home?

C. Yes.

D. When you got home you invited Mr. Gavin into your apartment isn't that right?

C. Yes.

D. He didn't break in did he, or force you to let him in?

C. I invited him in for tea.

D. And after the tea was made you sat down on the couch next to Mr. Gavin, is that right?

C. Yes.

D. Were there any chairs in your living room? Any place for you to sit other than the couch?

C. Yes.

D. But you chose to sit on the same couch as Mr. Gavin rather than in some other chair where it would have been awkward for him to touch or kiss you, is that right?

C. I sat on the couch with Mr. Gavin because I liked him and wanted to get to know him better.

D. And while you sat on the couch together you and Mr. Gavin began to kiss is that right?

C. Yes.

D. And these were lingering kisses on the lips is that right?

C. Yes.

D. And you didn't object?

C. No, not at that point.

D. Isn't it true that you let Mr. Gavin run his tongue along your lips without objecting?

C. Yes.

D. And you let him put his tongue in your mouth didn't you?

C. Yes.

D. And during these kisses you put your tongue in his mouth didn't you?

C. Yes.

D. So Miss Tims, it seems safe to say that you and Mr. Gavin were kissing passionately on your couch is that right?

C. Yes.

D. And you were enjoying these passionate kisses?

C. At that point yes.

D. And you were not objecting to his kissing you passionately?

C. No. Not at that point.

D. Along with passionate kissing you and Mr. Gavin were hugging and holding one another is that true?

C. Yes.

D. And you did not object to this hugging or holding did you?

C. Not at first, no.

D. During this hugging and holding your bodies must have touched and you must have rubbed your bodies together, isn't that true?

C. Yes.

D. And you didn't object to your bodies rubbing together did you?

C. Not at first, no.

D. After passionate kissing and hugging and rubbing Mr. Gavin moved his hand to your breast did he not?

C. Yes, and when he did that I pushed his hand away.

D. Did you also stop kissing him at that time, and get up from the couch?

C. No.

D. In fact, even as you pushed Mr. Gavin's hand from your breast you continued to kiss him, isn't that true?

C. Yes.

D. In fact, you testified that Mr. Gavin stroked your breasts on several occasions

and at these times you continued to kiss him even as you pushed his hand away isn't that true?

C. Yes

D. And then you stopped pushing his hand away and allowed him to stroke your breasts through your blouse and bra is that right?

C. Yes.

D. And then you let him undo your blouse and unhook your bra didn't you.

C. Yes.

D. Did you object when Mr. Gavin undid your blouse?

C. No.

D. Did you object when he undid your bra?

C. No.

D. Miss Tims, while you allowed Mr. Gavin to fondle your naked breasts did you say to him "Oh Jim, maybe we should stop?"

C. Yes.

D. But despite saying that you didn't try to stop Mr. Gavin from fondling you did you?

C. No.

D. You testified that you noticed that Mr. Gavin began breathing heavily as he stroked your naked breasts, is that right?

C. Yes.

D. Did you assume that he was breathing heavily because he was becoming more and more sexually aroused?

C. Yes.

D. Even after you noticed Mr. Gavin breathing heavily you continued to kiss with him passionately isn't that right?

C. Yes.

D. You allowed Mr. Gavin to put his hands up you skirt and rub you between the legs through your panties didn't you Miss Tims.

C. Yes.

D. OK. Miss Tims, let me see if I can summarize what you've said so far. You met Mr. Gavin through friends, liked him, and felt attracted toward him. You hadn't found anyone to date seriously for several months, and when Mr. Gavin came along he seemed to be what you were looking for. You had things in common, he was bright and witty, you both wanted a family some day, and you were attracted to him and wanted him to be attracted to you and to keep on seeing you. Am I about right so far?

C. Yes. I guess so.

D. Mr. Gavin took you out on two dates, and he paid all expenses both times. After the first date you kissed him passionately in his car and then invited him up to your apartment where you voluntarily had sexual intercourse with him. After the second date you again invited him into your apartment, willingly sat with him on the couch, willingly kissed him passionately and repeatedly, willingly let him put his tongue in your mouth, willingly, put your tongue in his mouth, willingly let your bodies rub together, and continued kissing him passionately even as you pushed his hand from your breasts. Then you stopped pushing his hand from your breast and, in fact, allowed him to undo your bra and fondle your naked breasts. In fact you allowed him to continue fondling your breasts and allowed him to put his hand up your skirt and rub between your legs and even after you noticed that he was becoming more and more sexually aroused. Is that true?

C. Yes, but then I...

D. Thank you Miss Tims, your yes was the answer to my question. Now, while you were passionately kissing Mr. Gavin, were you enjoying those passionate kisses?

C. Yes. At first I was.

D. And did you also become sexually aroused?

C. Yes.

D. Isn't it also true that you wanted Mr. Gavin to have sexual intercourse with you?

C. No. It was too early for that. I didn't know him well enough for that.

D. Come now Miss Tims, you just testified that you had engaged voluntarily in sexual intercourse with Mr. Gavin only the day before. Now, the very next day you again became sexually aroused as you passionately hugged and kissed Mr. Gavin. It is true is it not that as you hugged and kissed Mr. Gavin you wanted him to continue his lovemaking?

C. I wanted to continue hugging and kissing Mr. Gavin, and being close to him, but I didn't want to have sex with him again the way I had the night before. I had been drunk the night before and went further than I should have with someone I didn't really know very well, and I wanted to wait and get to know him better before having sex with him again.

D. Isn't it true that you really wanted to have sex with Mr. Gavin but put up a token protest because you didn't want him to think you were cheap or easy.

C. I didn't want to have sex with him because I didn't want to think of myself as cheap, and I wanted to get to know him better first.

D. Miss Tims you testified that you tried to fight Mr. Gavin off but that he overpowered you, and forced you to have intercourse is that correct?

C. Yes.

D. In fact, you didn't fight very hard did you?

C. I fought as hard as I could, he was too strong for me.

D. In your struggle with Mr. Gavin did you suffer any broken bones?

C. No.

D. Any of your teeth knocked out?

C. No.

D. Did you get a black eye?

C. No.

D. Any cuts or bruises on your face or body?

C. No.

D. You testified that you tried to fight off Mr. Gavin, is that right?

C. Yes, I tried to push him off of me and to hit him but he was too strong.

D. Did you gouge him in the eye with your fingers?

C. No.

D. Did you kick him in the testicles?

C. No.

D. Did you scratch him hard enough to make him bleed, or hit him hard enough to give him a black eye or some other bruise?

C. I hit him as hard as I could but he wouldn't stop. I didn't have room to kick him or to hit him harder because of the way he had me pinned against the couch.

D. Miss Tims, you have just testified that in your supposed struggle with Mr. Gavin neither you nor he was hurt. Neither of you suffered bruises, and neither of you bled. Although you claim that you fought Mr. Gavin as hard as you could you also claim that you never kicked him or scratched him or gouged him. Now the real truth is that you never really fought Mr. Gavin very hard because you never really wanted him to stop. You put up a token resistance because nice girls are supposed to, and you didn't want to appear cheap by having sex two nights in a row without some show of protest. But in fact you allowed him to have sexual intercourse with you because that's what you really wanted. Now that's the real truth isn't it Miss Tims?

C. No. I fought him as hard as I could. I pushed him and tried to get away, and when I couldn't I became more and more frightened and panicked. I kept telling him to stop, but he wouldn't stop.

D. You kept pushing him away while at the same time you continued to kiss him passionately is what you testified to earlier. What that means is that you really wanted Mr. Gavin to ignore your protests and have sex with you doesn't it?

C. When we first started kissing I wanted him to continue, yes. But later, when he started taking my panties off, and ignoring my protests I wanted him to stop, but he wouldn't stop no matter how much I tried to make him.

D. Miss Tims, you testified that before sitting down on the couch with Mr. Gavin you liked him, hoped to get to know him better, and hoped to continue going out with him, is that right?

C. Yes.

D. After you had sexual intercourse with Mr. Gavin you knew he wouldn't see you again didn't you?

C. After he raped me I didn't ever want to see him again.

D. Miss Tims, I submit that Mr. Gavin did not rape you. If you had really struggled with Mr. Gavin as you claim, then one of you would have been badly hurt. But neither of you was hurt at all. Obviously there was never any serious struggle. Instead, you willingly had sex with him after putting up a token protest. You had sex with him because, as you testified yourself, you liked him, wanted him to like you, and wanted to continue seeing him. Moreover, you had sex with him because you were feeling passionate and sexually aroused, and were sexually attracted to him. However, after the sex, you realized that Mr. Gavin was not going to see you again. You were hurt by this and angry and, therefore, after Mr. Gavin left your apartment you called the police and falsely accused him of rape. Now that's what really happened isn't it Miss Tims?

C. I did not falsely accuse Mr. Gavin of rape. I struggled with him but he overpowered me and raped me. I was terrified. I never wanted to see him again. I called the police because he raped me.

D. Thank you Miss Tims. No further questions your Honour.

DIRECT EXAMINATION OF DR. SUZANNE BARLOW

P. Dr. Barlow please tell the court your name, occupation and connection with this case.

B. My name is Suzanne Barlow. I am a resident physician at the Ottawa General Hospital and was the chief resident in the emergency room the night that Miss Tims was brought in for examination.

P. Did you personally examine Miss Tims.

B. Yes.

P. Please describe the results of your examination.

B. Miss Tims' eyes were red and swollen from crying. She was shivering and agitated and stated that she had been raped. A gynecological examination confirmed that Miss Tims had recently had sexual intercourse, and a sample of semen was taken from her vagina for later testing.

P. Was Miss Tims' psychological condition consistent with that of a rape victim.

B. Yes. As I stated, she was agitated and crying. She said that she had been raped and she was afraid to be left alone.

P. Thank you Dr. No further questions.

CROSS-EXAMINATION OF DR. BARLOW

D. Dr. Barlow, did Miss Tims exhibit any evidence of having been beaten?

B. No.

D. She didn't have any broken bones, no teeth knocked out, no black eyes, nothing like that?

B. No. There was no indication that she had been beaten.

D. Dr. Isn't it true that rape victims often have evidence of tearing in the vaginal area.

B. Yes. Often times the forced insertion of the penis or some other object into the vagina when it is insufficiently lubricated causes tearing and bleeding of vaginal tissues. Rape doesn't always produce such injuries, but frequently it does.

D. Was there any such injury noted in Miss Tims' vagina.

B. No.

D. What causes a woman's vagina to lubricate?

B. The normal cause is sexual arousal.

D. Thank you Dr. No further questions.

DIRECT EVIDENCE OF DR. NORMA SHAPIRO (INTERNIST)

D. Dr. please tell the court your name affiliation and involvement in this case.

S. I'm Dr. Norman Shapiro, an internist at the Ottawa General Hospital. I was asked by the police to do a physical examination on Mr. James Gavin.

D. And what were the results of your examination?

S. That Mr. Gavin is a healthy, well nourished 25 year old Caucasian male who stands 6 feet tall and weighs 200 pounds.

D. Did you find any bruising on Mr. Gavin's hands that would indicate that he had hit someone with his fists?

S. No.

D. Tell me Dr. why do the police ask physicians to examine suspected rapists.

S. Basically for two reasons. First to determine if there is evidence such as bruised fists that would indicate that the suspect had inflicted injuries on his victim, and second, to find physical evidence that the victim struggled with him.

D. What kind of physical evidence would indicate that the victim had struggled?

S. For instance, bruises, scratches, cuts, or bite marks on the suspect that were inflicted by the victim would be evidence that the victim had resisted her attacker.

D. Did you find any such physical evidence on Mr. Gavin to indicate that Miss Tims had struggled with him?

S. No.

D. Thank you Dr. No further questions.

CROSS-EXAMINATION OF DR. NORMA SHAPIRO

P. Dr. Do rape victims always inflict damage on their attacker.

S. No, frequently they don't inflict any damage.

P. Does the absence of such physical damage to the rapist indicate that his victim wasn't really raped and consented voluntarily.

S. No, not at all. Most men are bigger and stronger than most women and men are also much more likely than women to know how to fight. In many cases a rapist can subdue his victim without suffering any damage.

In fact, many rape victims are too terrified to put up much of a physical struggle. Furthermore, it's not a particularly good idea for women to struggle with their rapist. Those that do are often very badly beaten and sometimes even killed.

P. Thank you Dr. No further questions.

DIRECT EXAMINATION OF DEFENDANT

D. Mr. Gavin, please give the Court your full name, address and occupation.

G. James Gavin. I'm 25 years old and live at 325 Bell St. in Ottawa. I'm currently studying for my Master's degree in Computer Science at Ottawa University.

D. Before this current charge had you ever been arrested for anything?

G. No sir.

D. Never been picked up for drunk driving, never had the police come over to complain the music was too loud in your apartment, never been picked up on any kind of sex charge, nothing like that?

G. No sir. Before this happened I'd never been in any trouble with the police.

D. Is Miss Tims the first girl you ever dated?

G. No. I've dated a number of different women.

D. Have any of them ever accused you of rape?

G. No sir.

D. Ok. Mr. Gavin, in your own words please tell the Court about the events that led up to you being charged with sexual assault.

G. I met Miss Tims in the school cafeteria through some friends. We seemed to hit

it off in our first meeting, so I asked her to go to dinner. She agreed and gave me her phone number so I could call her. I called her a couple of days later and made the arrangements. The night of our date I picked her up at her place and we went out for Italian food. I enjoyed myself and she also seemed to have a nice time. After dinner I drove her home. I parked on the street in front of her building and we began kissing in the car. After a while she said that someone might come along and see us, so I suggested that we go up to her apartment. She agreed so we went up. Once inside we continued kissing and then one thing led to another and we had sex. Afterwards we hugged for a while and then we made a date to meet the next evening to study together in the library. Then I left and went home. The next night we studied in the library for a couple of hours, went out and grabbed some burgers and then went back to the library and studied some more. Around 10:00 we were both about studied out, so we went to the pub, had a couple of beer and then drove back to her place. Miss Tims invited me in again and we sat together on her living room couch. After a couple of minutes we began making out.

D. Can you please describe for the Court what you mean by making out.

G. We began kissing and holding one another and stroking one another. At first it was just kind of light kissing, but both of us started getting aroused and we began French kissing.

D. How did you know that Miss Tims was becoming aroused?

G. Well, she began breathing heavier, and holding me tighter, and she kind of moaned when I nibbled her ear and put my tongue in it.

D. By French kissing do you mean that you put your tongue in Miss Tims' mouth?

G. Yes.

D. Did she object?

G. No. She liked it and did the same thing to me.

D. Please continue Mr. Gavin.

G. Well we kept going on that way for a while and then I started undoing her blouse and bra and kissing her breasts. Then I took off her panties and we had intercourse.

D. Did Miss Tims object to your stroking her breasts?

G. At first, when I began stroking her breasts she would push my hand away, then we would keep kissing and hugging, and I would put my hand back. That went on for

a little while.

D. Why did you put your hand back to Miss Tim's breasts if she kept pushing it away?

G. Well she pushed it away, but at the same time she kept kissing me and getting more aroused, and rubbing against me. It was obvious to me that she wanted me to continue. I mean, when you're making out with a woman you don't know too well, she often says that she wants to stop, or she pushes your hand away, but she doesn't really mean it. She does it to get across the idea that she's not cheap or easy and doesn't do this with everyone. I mean. If a woman really wants you to stop she makes it clear. She stops kissing you and says no. She doesn't let you take off her blouse and panties and let you slip in between her legs.

D. Then it was your impression that Miss Tims' protestations were not genuine, and that, despite them she really wanted you to continue your advances, and wanted you to have intercourse with her? Is that right?

G. Definitely. There was certainly no doubt in my mind that Miss Tims was enjoying our make out session and wanted me to continue. For instance, after she pushed my hand away from her breasts a few times she stopped pushing it away and let me undo her blouse and her bra. Then I started feeling up her breasts under her bra and she didn't push my hand away for that.

D. Mr. Gavin, is it true that you pinned Miss Tims against the couch so that she couldn't escape?

G. At first we were sitting up on the couch kissing, but as we both got more aroused we were sort of half lying down on the couch and half sitting on it. I was partly laying on top of her and we were rubbing our bodies together as we kissed. Miss Tims was squeezed against the back of the couch, but I wasn't pinning her to it. I was half lying on top of her kissing her.

D. Isn't it true that Miss Tims stopped kissing you, asked you to stop, and struggled to free herself from you?

G. It was me that stopped kissing her. I mean, after I undid her bra I stopped kissing her on the mouth and began kissing her breasts. She was moving around a lot on the couch, but I don't know that I'd call it struggling. She was pretty aroused by that point. Sure, when I started taking her panties off she said no and stop a few times, but it was like when she moved my hand from her breast and kept kissing me. I knew she didn't really want me to stop. She might have hit at me a few times and tried pushing me away. To be honest, I don't remember all the details. I was really excited by that time and wasn't paying a lot of attention to what she was doing.

Besides, after I actually got my penis inside her, she stopped struggling.

D. How did the situation end.

G. After we finished having sex I sat up and noticed that Miss Tims was upset and crying. Sometimes, when women have sex with you on the first or second date they feel guilty because they think you'll think they're cheap. I thought that was how Miss Tims might be feeling, so I told her to relax and that everything would be OK. But she kept crying, and then she told me that she thought I should leave.

D. Then what?

G. Well, I didn't want to make her feel any worse, so I got dressed and left.

D. Were you angry or upset with Miss Tims when you left?

G. No, not at all. I liked Miss Tims and thought that our relationship might go somewhere. I felt bad that she was upset, but I didn't want to stay around after she had asked me to leave.

D. At the time you left were you planning to see Miss Tims again?

G. Yes. I planned to call her the next day to see if she wanted to go out on another date. I was trying to think of some place special that I could take her when the police showed up and placed me under arrest. I didn't understand it at all.

D. Thank you Mr. Gavin. No further questions your Honour. {\\5

CROSS-EXAMINATION OF DEFENDANT

P. Mr. Gavin, from the time you began trying to take off Miss Tims' panties until you left her apartment she did not kiss you, or stroke you, or make any physical gesture to indicate that she wanted you to continue your sexual advances, isn't that true?

D. Well she really couldn't have kissed me at that point, because my head was down kissing her breasts. As to other physical gestures, she was moving around quite a bit on the couch and it was hard to tell what her movements meant.

P. Was it hard to tell what she meant when she begged you repeatedly to please stop trying to have sex with her and to leave her alone?

D. I assumed she was just playing hard to get, and that what she really wanted was for me to continue.

P. Mr. Gavin, from the time you began taking off Miss Tims' panties everything she said and did was consistent in indicating that she wanted you to stop your sexual advances, isn't that true?

D. I don't think it is clear at all what she meant. I thought she wanted me to continue, so I did.

P. Miss Tims hit you with her fists on the shoulders while pleading and yelling for you to stop, didn't she?

D. I don't know whether she was using her fists or not. I was concentrating on kissing her breasts and taking her panties off.

P. Miss Tims was repeatedly hitting you and yelling and pleading for you to stop, was she not.

D. Yeah, she was hitting at my shoulders, but not very hard, and even though she kept saying stop, she didn't really mean it. If she'd meant it, she wouldn't have been making out with me on the couch to begin with, and wouldn't have kept kissing me as she pushed my hand from her breast.

P. Mr. Gavin. You have just testified that Miss Tims was yelling and pleading for you to stop your advances, and at these times was not kissing you or doing anything else to encourage you. Is this true?

G. I guess it's true that she was yelling and pleading, but by that time I was too aroused to be listening carefully.

P. You were too aroused to be listening carefully, but not too aroused to methodically pull off her panties, force your knee in between her legs, and undo your own pants. You weren't too aroused to know exactly what you were doing in those instances were you Mr. Gavin?

G. I was doing those things because I was aroused, and because I thought that Miss Tims wanted me to do them.

P. Despite Miss Tims' yelling and repeated pleas for you to stop you thought she wanted you to continue?

G. Yes.

P. Despite her hitting you repeatedly with her fists, despite her trying to free herself from the couch, despite her desperately trying to push you away; despite all of this and while she screamed and yelled and begged for you to stop, you thought she wanted you to continue?

G. Like I said before, she didn't hit very hard. If she had really wanted me to stop she would have hit me a lot harder. If she had really been serious she would have kneed me in the groin or bitten off my ear or scratched me with her nails. She didn't do anything like that. All she did was put up a little token resistance for the sake of appearances. In fact, once I got my penis inside of her, she stopped fighting.

P. Once you had your penis inside of her she was so hysterical and frightened and overwhelmed that she couldn't fight any more isn't that true?

G. No. I think she stopped fighting at that point because the sex was what she really had wanted all along. Now that we were doing it, she knew she didn't have to protest any more.

P. Miss Tims is 5 feet 4 inches tall and weighs 112 pounds. How tall are you Mr. Gavin?

G. Six feet.

P. And how much do you weigh?

G. 200 pounds.

P. Mr. Gavin, you have testified that Miss Tims struggled with you, beat at you, tried to push you away, and plead repeatedly for you to stop your advances. Despite all of this you keep saying that Miss Tims really wanted you to continue. Now, what you really seem to be saying is that you, a 200 pound six footer, was able to force intercourse on a five-foot four inch, 112 pound woman without suffering much damage, and that this somehow indicates that you didn't really sexually assault her, is that right?

G. What I'm saying is that Miss Tims never made it clear to me that she wanted me to stop. The fact that she is only 5 feet four doesn't mean that she couldn't struggle harder. If she had really wanted me to stop she would have struggled hard enough to let me know that.

P. Isn't it true that Miss Tims tried to keep her legs tight together, and that you forced them apart with your knee in order to get between her legs?

G. It certainly didn't take much forcing. Sure she kept her legs together as part of her token protest, but I was able to slip my knee between them without much trouble. I wouldn't have been able to do that if she had been serious about keeping me from getting between her legs.

P. Do you think that your ability to pry open Miss Tims' legs with your knee had anything to do with the fact that you are a 6 foot 200 pound man and she is a 5 foot four 112 pound woman?

D. Objection your Honour, calls for a conclusion.

J. Sustained.

P. I'll withdraw the question your Honour. Mr. Gavin, after you finished having intercourse with Miss Tims did she thank you, or tell you how happy she was that you persisted, or how warmly she felt about you? Did she say anything at all along those lines?

G. No.

P. In fact, she was crying hysterically wasn't she?

G. She was crying and I tried to calm her down, but she wouldn't let me.

P. Didn't it surprise you that a woman who had supposedly submitted voluntarily to sexual intercourse with you would, afterwards, be crying hysterically and telling you to get out of her apartment?

G. Well, as I said earlier, sometimes girls who have sex with you after only one or two dates feel guilty and cry.

P. OK. Mr. Gavin let me see if I have this straight. You testified that, from the time you started trying to take off her panties Miss Tims begged and pleaded for you to stop and leave her alone. From that time on she did nothing to encourage your advances and, in fact, hit you repeatedly, tried to push you away, tried to prevent you from getting between her legs, and cried hysterically. You finally managed to pry open her legs and had sexual intercourse with her. Afterwards, she cried hysterically and told you to leave her apartment. But you insist that, despite all of this Miss Tims really wanted to have sex with you, is that what you are saying?

G. I'm saying that she didn't try to fight me off as strongly as she could have or as strongly as you imply. Instead, she made only token protests. Given that she had sex with me willingly the night before and earlier that same night had been making out with me eagerly, I assumed that she really wanted me to continue, and that's what I

did.

P. I have no more questions your Honour.

CLOSING STATEMENT FOR DEFENCE

Members of the jury, in our legal system it is the task of the prosecution to prove beyond a reasonable doubt that a defendant is guilty of the crime with which he is charged. The defendant does not have to prove that he is innocent. Instead, his innocence is assumed until the prosecution has proved otherwise. Ladies and gentlemen you have all heard the evidence in this case, and I think that it should be clear to any reasonable person that the evidence falls far short of proving that Mr. James Gavin sexually assaulted Miss Janet Tims. Is there reasonable doubt to the contrary? Of course there is. A great deal of reasonable doubt. In fact, there is more than just reasonable doubt. The evidence, when taken as a whole clearly exonerates my client. That evidence indicates that my clients belief that Miss Tims wished him to continue his sexual advances and consented to sexual intercourse with him was a reasonable one. Members of the jury, let us review the evidence. My client had two dates with Miss Tims. On the first she allowed him to pay for dinner, had to much to drink, kissed him passionately in his parked car and then invited him into her apartment and voluntarily has sexual intercourse with him. Miss Tims herself testified that she liked my client, wanted to see him again, enjoyed his company, and wanted him to like her. In our society, people who feel this way about one another and who have sex together on one date usually end up becoming sexually intimate with one another on other dates as well. Therefore, it was only reasonable for Mr. Gavin to assume that Miss Tims was interested in him sexually on their second date as well. Everything that happened between Miss Tims and my client on their second date only served to confirm his expectation that Miss Tims was making herself sexually available to him. After studying at the library the couple went drinking and then, at 10:00 in the evening Miss Tims invited Mr. Gavin back to her apartment. Why would a woman invite a date whom she liked back to her apartment late in the evening unless she wanted to become sexually intimate with him? Especially if the date was someone she was becoming romantically involved with and just the night before had become sexually intimate with? Once inside the apartment all of Miss Tims' behavior served to confirm my client's expectation that she wished to become sexually intimate with him once again. She sat with him on the couch and thereby made herself available for easy physical contact. If she hadn't wanted to become sexually involved why didn't she sit in a different chair where Mr. Gavin couldn't reach her? Obviously, she sat on the couch with Mr. Gavin because she expected and hoped that Mr. Gavin would initiate sexual overtures toward her. Because Mr. Gavin is a healthy, normal heterosexual male, Miss Tims was not disappointed. Mr. Gavin

began to kiss and hug her. Did Miss Tims respond to these advances by pulling away and informing Mr. Gavin that she was not interested in sex? No, she did nothing of the kind. Instead, she kissed and hugged him back. Ladies and gentlemen, Miss Tims, herself, admitted under cross-examination that these were deep passionate kisses in which the two parties inserted their tongues into each others mouths. Miss Tims also testified that she was not merely the passive recipient of Mr. Gavin's advances. She herself testified how she actively kissed him back, how she held and hugged him, how she inserted her tongue into his mouth. Moreover, Miss Tims testified how she noticed that Mr. Gavin was becoming sexually aroused. How did she respond to his arousal? She continued kissing him passionately and rubbing her body against his, she let him undo her bra and fondle her naked breasts, she let him put his hand under her skirt and rub it between her legs. Members of the jury, under these circumstances how could Mr. Gavin have come to any conclusion other than the obvious one that Miss Tims wished him to continue his advances and wished to have intercourse with him?

Ladies and gentlemen Miss Tims testified that she pleaded with my client to stop his advances and even tried to fight him off. But when we carefully examine what she really did, we find that she communicated very mixed messages about what she wanted my client to do. Miss Tims testified that, when my client began stroking her breasts she eventually pushed his hand away. Did she also at that point pull away from his embrace, stop kissing him, get up from the couch and state firmly that their lovemaking was at an end? No, she did no such thing. On the contrary, even as she pushed his hand away from her breasts, Miss Shaw continued to passionately kiss and embrace my client. Furthermore, when my client continued to return his hand to her breast she stopped pushing it away and after that allowed him to actually undo her bra and fondle her breasts without further protest. During this time, as she continued to passionately kiss my client she knew that he was becoming more and more sexually aroused. In fact, she testified that she herself was by this time sexually aroused. Obviously, my client was aware of her sexual arousal just as he was aware of his own. Here then was the situation of my client. He was in a state of high sexual arousal engaged in passionately kissing, hugging and stroking an attractive woman who he liked and who liked him. This woman was herself in a high state of sexual arousal and her arousal was evident to my client. Not only was this woman highly aroused sexually, she was eagerly receptive to his sexual advances. She kissed him back, hugged him and allowed him to passionately embrace her, undo her bra fondle her breasts, and rub his hand between her thighs. When my client stroked Miss Tims' breast she did not pull away. She pushed his hand away but then allowed it to remain without further protest and at the same time she continued to passionately embrace him. Obviously, my client concluded that Miss Tims wanted him to continue. Obviously, if she had really wanted him to stop she would have stopped her own sexual behavior toward him. But she did not stop her passionate behavior. She continued it even as she pushed away my clients hand.

Members of the jury, this was obviously one of the situations that occurs among intimate partners where NO means YES. Obviously Miss Tims did not want my

client to stop his passionate embraces. Obviously, despite her token protestations what she really wanted was for him to continue. Obviously, what she really wanted was to be taken sexually despite her token protestations. Members of the jury, my client had sexual intercourse with Miss Tims in the honest belief that she wished to have intercourse. Given that Miss Tims' passionate embraces had produced in him an extremely high level of sexual arousal there was little else he could think other than that she, like himself wanted their sexual activity to continue to its natural termination.

Members of the jury, Miss Tims testified that she tried her best to fight off my client, and that her attempts in this regard were not simply token gestures of resistance that she wished him to overcome. But did she really try to fight him off. Ladies and gentlemen recall the testimony of the physicians that examined both Miss Tims and Mr. Gavin. Neither of them was bruised, neither showed any evidence of having engaged in a real physical struggle. Recall especially the testimony of the doctor who examined Miss Tims. Recall the doctor testifying how rape victims often have tearing in their vaginal tissues, and that such tearing occurs because during rape intercourse is performed when the victim's vagina is not lubricated. As the doctor testified, there was no tearing of tissue in Miss Tims' vagina. Why? Because she wasn't raped. As Miss Tims herself testified, she was sexually aroused by Mr. Gavin's embraces. Her body was fully prepared to receive his penis and therefore, there was no damage to her vagina. If Miss Tims had made a serious and concerted attempt to stop my client why wasn't he scratched? Why was there no evidence on his body of bite marks? Certainly Mr. Gavin is larger and stronger than Miss Tims, but can this fact really explain the total failure of Miss Tims to inflict any damage to my client while she was supposedly struggling with all her might? Members of the jury, Miss Tims testified that she hit Mr. Gavin with her free hand. Why then did she not use this same free hand to reach down and grab his testicles. You can be well assured, members of the jury, that had Miss Tims done that, she would have had little difficulty in getting Mr. Gavin's complete and undivided attention. But Miss Tims did nothing of the kind. She did not put up a real struggle with Mr. Gavin because she didn't really want Mr. Gavin to stop. After all, she was as sexually aroused as he was. She wanted sexual relief just as he did. Why then did she make a token protest. Why did she pretend she wanted him to stop, while at the same time making it clear that she liked what he was doing and wanted her to continue? Ladies and gentlemen Miss Tims made a token resistance because she was afraid. She knew that she had consented to intercourse on her first date when she shouldn't have, and she was afraid that if she consented too quickly once again, or without some show of resistance, Mr. Gavin might think her cheap. He might think that she was willing to jump into bed just as quickly with any man who happened to come along. As Miss Tims herself testified, she cared about Mr. Gavin. She wanted him to like her and to go on seeing her. For this reason she also wanted him to respect her, to not think of her as cheap or easy. To achieve this end she employed a stratagem that is as old as the history of sex itself. She pretended to resist while at the same time making it perfectly clear that she wasn't really resisting.

Why did Miss Tims call the police and accuse Mr. Gavin of sexual assault after Mr. Gavin had left her apartment? Members of the jury, notice that Miss Tims never accused Mr. Gavin of sexual assault while he was still in her presence. She never turned to him and said "You raped me. I never want to see you again." Instead, all she did when the sex was over was tell Mr. Gavin to please leave her apartment. Members of the jury, when the sex was over Miss Tims was terribly afraid that Mr. Gavin would not see her again. She was frightened that perhaps she should have protested more strongly, so that he wouldn't think her cheap or easy. What she was really hoping is that Mr. Gavin wouldn't leave when she asked him to. That he would sweep her in his arms and tell her that everything was OK, that he still cared about her, that he wanted to continue their relationship. That she hadn't been bad or cheap for sleeping with him. But Mr. Gavin was unaware of what Miss Tims was actually thinking. He did want to see her again, and never thought that Miss Tims was cheap, so he was unable to fathom why she was distressed. However, not wanting to make her more upset he politely left her apartment when she asked him to. Once he was gone Miss Tims' worst fears were confirmed. She believed she had lost Mr. Gavin because she had been cheap and had given in too easily. She brooded about this for some time, and eventually, came to convince herself that Mr. Gavin had raped her as a way of protecting herself against the thought that she had been so cheap and easy that she had lost a potentially important relationship.

Members of the jury, if Miss Tims had really believed that she had been raped she would have called the police immediately after Mr. Gavin left her apartment. However, she waited at least a half hour before calling the police. Why? Because she knew that no rape had occurred, and because it required a half hour of brooding and rationalization for her to cope with the fact that she had destroyed her relationship with Mr. Gavin by developing the belief that what had happened was somehow his fault.

Members of the jury this is a tragic case in which two people have been hurt. I do not believe that Miss Tims is a bad person. She is, however, hurt, confused and disturbed, and the charge that she has brought against my client is completely unjustified. Ladies and gentlemen, my client is an innocent man caught in an unfortunate situation that was not of his own making. He is an intelligent, hard working university student working on his Master's degree. He has never been in trouble with the police, and no other woman has ever filed a sexual complaint against him. Obviously, my client is not a rapist. He did not sexually assault Miss Tims and, for this reason I ask that you find him not guilty. Ladies and Gentlemen of the jury thank you very much for your attention.

CLOSING STATEMENT FOR THE PROSECUTION

Members of the jury the judge will shortly describe the law concerning sexual

assault. He will tell you that a sexual assault occurs when one person forces another person to have sexual relations against their will. The law does not say that a woman who invites a man into her apartment is obliged to have intercourse with him. Nor does it say that a woman who kisses a man is obliged to have intercourse with him, or that a woman must have intercourse with a man if she allows him to fondle her breasts, or that a woman must sexually satisfy a man who becomes aroused after kissing and hugging her. Finally, the law does not say that a woman must have sexual intercourse with a man because she voluntarily had intercourse with him on a previous occasion. On the contrary, the law assumes that people have a right to control their own bodies, and furthermore, that they have a responsibility to not infringe on the rights of others. Forcing someone to have sex against their will is a violation of that person's legal rights. It is against the law. It is against the law if the person forced is a stranger, or an acquaintance, or even a man's wife. Under any circumstances forcing a person to have sex against their will is a sexual assault.

Ladies and gentlemen, my colleague for the Defense has tried very hard to confuse and obfuscate a very simple issue. He has tried to tell you, against all the evidence, that Miss Tims consented to have sex with Mr. Gavin on their second date. To do this the defence has attempted to gloss over the fact that Miss Tims very clearly and very explicitly changed her attitude toward Mr. Gavin's behavior when he attempted to remove her panties.

Members of the jury, the prosecution concedes that Miss Tims voluntarily invited Mr. Gavin into her apartment, sat with him on her couch and allowed him to kiss her. The prosecution further agrees that Miss Tims liked Mr. Gavin and, enjoyed kissing and hugging with him. However, when Mr. Gavin attempted to remove Miss Tims' panties she very clearly, firmly and consistently informed him to stop. Miss Tims put a limit on what she was willing to allow Mr. Gavin to do to her body. This she had a perfect right to do. Furthermore, she also had a legal right to expect Mr. Gavin to respect her limits. Unfortunately, Mr. Gavin did not respect those limits. Instead, he began to forcibly remove her panties. By this time Miss Tims was no longer kissing and hugging Mr. Gavin. On the contrary, by this time she was terrified. She was pleading and screaming for Mr. Gavin to stop. She was trying to push him away, and was hitting his shoulders with her free hand. She could not escape because Mr. Gavin, who weighs 200 pounds to her 112 pound had her wedged against the couch.

Members of the jury the theory of the defense, that Mr. Gavin was unaware of Miss Shaw's protests, is obviously nonsense. Could any sane man actually believe that a struggling, hysterical woman who was pushing at him and hitting him and pleading for him to stop, was really asking for sex?

Could any sane man really believe that he would have to wedge his knee between a woman's tightly pressed legs to get them apart if she really wanted to have sex with him? Of course not. Mr. Gavin is an intelligent man. He obviously knew that Miss Tims was terrified, and that she wanted him to stop his advances. Despite that knowledge he ignored her protests and sexually assaulted her in order to selfishly satisfy his own sexual impulses.

Why didn't Miss Tims gouge out Mr. Gavin's eye, or rip at his testicles with her

free hand, or bite off his ear? Members of the jury try for a moment to place yourself in Miss Tims' position. She is with a man she likes and thinks she can trust. To her horror she realizes that her trust has been misplaced. Suddenly she has lost control of the situation. The man she trusted is sexually assaulting her. She feels overwhelmed by terror. She feels overpowered and violated. In her terror and anguish she reacts instinctively. She tries to pull away, she pleads and cries, she tries to flay at her attacker with her free hand, but nothing works. If Miss Tims had been trained in Karate, and if she had remained calm she might have thought to gouge out her attacker's eye or bite off his ear, or grab him by the testicles. But Miss Tims is not a Karate expert. She has no training in self defence, and, like most other women in our society, she had never before been in a physical fight. The theory of the defense that Miss Tims really wanted sex because she didn't fight well enough to hurt her attacker is a viscous and sexist attempt to blame the victim instead of the criminal. Miss Tims should never have had to fight at all. She has a right to limit what is done to her body, and she should not have to defend that right, or prove that she really meant no when she said no. Members of the jury the defence has no real case. It is obvious that Miss Tims was sexually assaulted by Mr. Gavin. However, rather than admit the obvious the defense has twisted the issue by attempting to put Miss Tims on trial. But Miss Tims did not break any law. She did absolutely nothing wrong. All Miss Tims did was insist that her body is her own and does not belong to a man just because he buys her dinner or because she allows him to kiss her or because she had consented to sex with him on a previous occasion.

The defense has used as evidence that Miss Tims consented to intercourse the fact that there was no tearing of her vagina. This argument is specious. As Doctor Barlow testified sexual assault does not always produce tearing of the vagina. Dr. Barlow pointed out that tearing tends to occur when the vagina is not lubricated and that vaginal lubrication is usually caused by sexual arousal. Keep in mind, members of the jury that Miss Tims had become sexually aroused while kissing Mr. Gavin on the couch. Later, when Mr. Gavin attacked her, her arousal turned to terror. Nevertheless, her vagina may have still been lubricated enough to prevent vaginal tearing. Does this mean that Miss Tims was not really assaulted or that she consented to intercourse? Of course not.

After Mr. Gavin had finished his sexual assault he found that Miss Tims was crying and hysterical. Both the police officer that answered Miss Tims' call and the Doctor who examined her at the hospital testified that Miss Tims had been crying, that she was frightened and shaking and terrified to be left alone. Does this sound like the description of someone who really wanted sex and got what they wanted, or does it sound like a terrified woman who had just been through a horrible experience? Obviously this is a description of a terrified woman who has just lived through a sexual assault. How does the defense deal with this evidence? It creates a truly bizarre fantasy out of thin air. On the basis of no evidence whatsoever, the defense assumes that Miss Tims was upset after intercourse because she was afraid that Mr. Gavin no longer cared for her and would leave her. Members of the jury this theory is completely absurd. It was invented to try and deflect attention from the obvious

fact that Miss Tims was profoundly disturbed after her sexual assault. The defence wants you to ignore the fact that a woman who wanted sex and then got the sex that she wanted would not be upset. Such a woman would not accuse the man who gave her what she really wanted of sexual assault.

The defence has argued that Miss Tims waited a half hour before calling the police because it took her that long to convince herself that she had been assaulted. Members of the jury, this too is nonsense. Miss Tims knew immediately that she was being sexually assaulted. That is why she struggled to free herself and why she became terrified when she realized that she was helpless. After the assault ended and Mr. Gavin left the apartment Miss Tims rushed to lock the door so that he could not come back. She then collapsed terrified, dazed and stunned onto her living room floor and sobbed uncontrollably. It took her a half an hour before she could gain enough composure to call the police and tell a coherent story.

Members of the jury the evidence in this case is clear and compelling. It indicates beyond a reasonable doubt that Mr. Gavin sexually assaulted Miss Tims. There is no ambiguity here. The facts are clear. They speak for themselves and they indicate beyond any reasonable doubt that Mr. James Gavin sexually assaulted Janet Tims. For this reason I ask you to find Mr. Gavin Guilty of sexual assault. Thank you for your patients and for your attention.

JUDGE'S CHARGE

Ladies and gentlemen of the jury, you have heard the evidence in this case and you must now follow the law as I will present it to you and deliberate to a unanimous verdict. Mr. James Gavin has been charged with sexual assault upon the person of Miss Janet Tims. Now, sexual assault is defined in Section 244 of the Criminal Code as follows:

A person commits an assault when (a) without the consent of another person, he applies force intentionally to the other person, directly or indirectly; (b) he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, the present ability to effect his purpose.

This section of the criminal code applies to all forms of assault, including sexual assault.

Everyone who commits a sexual assault is guilty of an indictable offence and is liable to imprisonment for ten years.

For the purposes of this section of the Criminal Code no consent is obtained when the complainant submits or does not resist by reason of (a) The application of force to the complainant or to a person other than the complainant; (b) Threats or fear of the application of force to the complainant or to a person other than the complainant.

Ladies and gentlemen of the jury it is the contention of the prosecution that Mr.

James Gavin sexually assaulted Miss Janet Tims. You have heard Miss Tims testify under oath that she was forced against her will to submit to sexual intercourse with Mr. Gavin. You have heard the testimony of other witnesses called by the prosecution to corroborate Miss Tims' testimony. These witnesses confirmed that, on the night in question Miss Tims had engaged in sexual intercourse and that semen obtained from her vagina came from Mr. Gavin. In addition, both the police officer who answered Miss Tims' call and the Doctor who later examined her at the hospital testified that she reported to them that she had been sexually assaulted. These witnesses further testified that Miss Tims was frightened, upset and crying and that she accused Mr. James Gavin of being her assailant.

Members of the jury, sexual assault means non-consensual sexual relations. Sexual intercourse that was consented to voluntarily by both parties does not constitute sexual assault. A person who voluntarily engages in sexual intercourse but who at a later time regrets having done so has not been sexually assaulted because the act of having sexual intercourse despite any later regrets was itself a non-coerced and voluntary action.

A person who consents to one type of sexual activity does not automatically or necessarily consent to all sexual activity. For example, a person who consents to a kiss has not necessarily consented to sexual intercourse. Similarly, the fact that a person consented to sexual intercourse with a person on one occasion does not necessarily mean that they have consented to have intercourse with that person on other occasions. The person who continues to force sexual activities on a person who has communicated that such activity is not consensual, commits a sexual assault.

Members of the jury you heard the Defense contend that Miss Tims was not sexually assaulted by Mr. Gavin but instead that she consented voluntarily to sexual relations with him. According to the theory presented by the Defense the behavior of Miss Tims towards Mr. Gavin both on their earlier date and on the night in question implied consent on her part to engage in sexual relations with Mr. Gavin. The Defense theory further holds that once they were seated together on the couch in Miss Tims' apartment, Miss Tims' behavior confirmed her willingness to have sexual intercourse with Mr. Gavin. The Defense does not challenge that sexual intercourse occurred between Mr. Gavin and Miss Tims, and it does not challenge that during the period of increasing intimacy and mutual sexual arousal on the couch that Miss Tims protested against Mr. Gavin's increasingly intimate sexual advances. However, the Defense contends that Miss Tims' protests were not genuine but were, instead, token gestures designed to communicate to Mr. Gavin that she consented to his advances despite superficial protests to the contrary. Finally the Defense contends that Miss Tims' distress following the sexual intercourse with Mr. Gavin did not reflect the distress of having been sexually assaulted but, instead, reflected the distress of knowing that she had lost her relationship with Mr. Gavin.

Members of the jury, in your deliberations it is important that you review very carefully all of the evidence that has been presented. You should think carefully about the testimony you have heard, and, where there was conflicting testimony you must make judgments about the credibility of the witnesses involved. Not everything said

under oath in a court of law is necessarily the complete truth. People are often swayed by various personal motivations to present their evidence in a way that is favorable to the outcome they favour.

It is up to you to use your intelligence and your common sense when evaluating the evidence and when reaching your conclusions. If after careful deliberation you conclude that the evidence presented before you proves beyond a reasonable doubt that Mr. Gavin assaulted Miss Tims, then you should follow the law as I have described it to you and find Mr. Gavin guilty of sexual assault. In other words, if you find beyond a reasonable doubt that Mr. Gavin forced Miss Tims to engage unwillingly in sexual intercourse, and that such force occurred after Miss Tims had clearly communicated to Mr. Gavin by word or by deed that she did not consent to the intercourse, then you should find Mr. Gavin guilty as charged. On the other hand, if after careful evaluation of the evidence you believe that a reasonable doubt remains concerning Mr. Gavin's guilt, then you should find him not guilty of the charges against him.

Now a reasonable doubt concerning guilt is not merely the possibility of innocence. A reasonable doubt is a doubt that would cause a reasonable and prudent person in the graver and more important affairs of life to pause and to hesitate to act upon the truth of the matter charged.

Proof beyond a reasonable doubt is not proof beyond all possible or imaginary doubt. Instead, it is proof that precludes every reasonable hypothesis except the hypothesis that it tends to support. Proof beyond a reasonable doubt is proof to a moral certainty. Proof beyond a reasonable doubt is proof strong enough to convince reasonable people who have examined the evidence before them that the crime that the defendant is charged with has been committed by the defendant. Proof beyond a reasonable doubt is proof that convinces reasonable people that no other reasonable conclusion is possible. Members of the jury you may now retire and begin your deliberations.

Appendix H
Conflicting Testimony

VAGUE EVIDENCE

JUDGE'S OPENING STATEMENT

Ladies and gentlemen of the jury, in the trial you will hear today the Crown has charged Mr. James Gavin with the sexual assault of Miss Janet Tims. During the trial you will see presentations of the case by both the Crown and Defense. The trial will begin with opening statements, first by the prosecuting attorney and then by the defence attorney. Following these opening statements you will observe the testimony of a series of witnesses called by the prosecution. Each of these witnesses will first be examined by the Crown attorney and then cross-examined by the Defense attorney. After the prosecution has completed presenting its case, you will see the witnesses called by the Defense. Each of these witnesses will first be examined by the Defense attorney and then cross-examined by the attorney for the prosecution.

Members of the Jury, in our legal system a defendant is presumed to be innocent until a jury of his peers hears all of the relevant evidence, deliberates on this evidence and then finds him guilty beyond a reasonable doubt. Therefore, it is very important that you keep an open mind throughout the whole trial and do not make a decision in this case prematurely. You will have ample time to carefully weigh the evidence and deliberate to a verdict after all of the evidence has been presented to you. It is important that you do not prematurely reach a verdict before this time.

Ladies and gentlemen of the Jury, sexual assault is defined in the Canadian Criminal Code as follows: A person commits a sexual assault when, without the consent of another person, he applies force to the other person directly or indirectly. This definition applies to all forms of assault including sexual assault. In other words, sexual assault means forcing a person to engage against that person's will in sexual activity.

Members of the Jury, let me caution you once again that the defendant is presumed innocent of the charges against him, and that you are to listen to all of the evidence with an open mind. You will have ample opportunity to deliberate on the evidence and to reach your conclusions after all of the evidence has been presented to you. The Crown attorney will now present his opening statement.

OPENING STATEMENT PROSECUTION

Ladies and gentlemen of the jury, the case before you is really quite straightforward. The prosecution will prove beyond a reasonable doubt that, on April 10, 1993, Mr. James Gavin sexually assaulted Miss Janet Tims. Now, the average person often believes that rapists are fiends who look and act abnormal and who prey

on women who are total strangers to them. In fact, rapists usually look like anyone else. They come from all strata of society and they cannot be distinguished by their looks or manner. Furthermore, most rapists know their victims. In fact, many more women are raped by acquaintances than by strangers. When James Gavin sexually assaulted Janet Tims the two were not strangers. In fact, both were University students who were on their second date. The prosecution concedes that, Miss Tims had been sexually intimate with Mr. Gavin on their first date, and that on the evening of the sexual assault Miss Tims and Mr. Gavin returned from a date to Miss Tims' apartment. You will hear Miss Tims testify that she invited Mr. Gavin in for tea and that the two of them sat down on Miss Tims' living room couch. Miss Tims will testify that she liked Mr. Gavin, and did not resist when he began to kiss and hug her. However, when Mr. Gavin attempted to take further liberties by removing Miss Tims' panties, Miss Tims protested. Members of the jury, sexual assault means sexual activity. Sexual intercourse is not voluntary when it is performed on a person who protests the intercourse and who tries to fight off their attacker. Sexual intercourse that is forced on a woman is sexual assault. The fact that a man and woman had consensual sex on an earlier occasion does not give that man a right to force himself sexually on that woman on a later occasion. Ladies and gentlemen, listen very carefully as Miss Tims describes how she repeatedly pleaded with Mr. Gavin to stop his sexual advances and leave her alone. Listen as she describes how she hit Mr. Gavin with her fists in an attempt to get him to stop, how she tried to push him away and fight him off, how he pinned her to the couch, forced his knee between her legs, and then forced her against her will and while she protested violently, to have sexual intercourse.

Members of the jury, a woman's body belongs to her and to her alone. A woman never owes sex to anyone, and she has a right to stop sexual activity whenever she wishes by saying no. No means no. When Mr. Gavin went too far Miss Tims said No. She said no clearly, repeatedly and unambiguously. She said No both verbally and also by trying to fight Mr. Gavin off. However, Mr. Gavin ignored Miss Tims' protests. Despite them he sexually assaulted her and, for that reason I ask you to find him guilty of sexual assault.

Ladies and Gentlemen of the jury, it is sometimes said that a man cannot rape a woman against her will, or that a woman who was not badly beaten was not really raped. Both of those statements are nonsense. Mr. Gavin is 6 feet tall and weighs 200 pounds. Miss Tims is only 5 feet 4 inches tall and weighs only 112. pounds. Obviously, a 6 foot man can easily overpower a woman of Miss Tims size despite her protests, and without beating her up. The law does not require that a woman be beaten in order to be sexually assaulted. All that is required is that the woman be forced against her will to engage in sexual acts. The prosecution will show that Mr. Gavin forced Miss Tims against her will to have sexual intercourse and for this reason I ask you to find Mr. Gavin guilty of sexual assault.

Thank you for your attention.

OPENING STATEMENT DEFENCE

Ladies and gentlemen of the jury, my client Mr. James Gavin, freely admits that he engaged in sexual intercourse with Janet Tims on the occasion of their first date, but not on the evening of April 10, 1993. Mr. Gavin did not sexually assault Miss Tims. Mr. Gavin is a graduate student in computer science. Before this unfortunate incident he had never been in trouble with the law. This is not the kind of person who rapes women. How then did his present troubles come about? Ladies and Gentlemen both Mr. Gavin and Miss Tims will describe for you how they met in school, liked one another, and had two dates together. Listen carefully as Mr. Gavin describes how both of them enjoyed themselves on their first date, and how at the end of the evening Miss Tims invited Mr. Gavin into her apartment, made love to him, and agreed to meet him for a second date the very next day. Mr. Gavin will further describe how, on the next day they went for a study date to the library and how after they were finished studying they drank beer at a pub and then went back to Miss Tims' apartment. Members of the Jury, Mr. Gavin did not force himself into Miss Tims' apartment following either of their dates, and he did not force her to sit with him on the couch and begin kissing and hugging. Listen carefully as Mr. Gavin describes how, after their second date it was Miss Tims who invited him inside and how Miss Tims voluntarily joined him on the couch. Notice how he will describe that Miss Tims was very receptive to his kisses and embraces, and how she passionately and repeatedly kissed him back. Listen carefully as he describes how both he and Miss Tims became increasingly more sexually aroused, and how Miss Tims encouraged him by continuing to kiss him and rub against him.

Members of the jury, the prosecution has told you that when a woman says no to a man's advances she means no and that's all there is to it. Members of the jury if only that were true life would be much simpler for us all. However, ladies and gentlemen we all know that, in real life No does not always mean no. Sometimes, when a man and woman are becoming intimate, the situation is complex and ambiguous and the woman's feelings are mixed. Sometimes, a woman likes a man, enjoys his caresses and wants him to continue, but at the same time she may have moral qualms, or believe that if she doesn't protest to at least some degree then it will mean that she is cheap or easy. Under circumstances such as these No may not mean No. Instead, it may mean maybe, or I'm not sure, or it may even mean yes, but only after I've protested so you won't think I'm cheap, or so I can assuage my own conscience. Members of the jury, during the time that Miss Tims and Mr. Gavin were in passionate embrace on her couch Miss Tims said No to Mr. Gavin's further advances. But what did she really mean by her No? Ladies and gentlemen listen carefully as Mr. Gavin describes how he began to stroke Miss Tims' breasts. When he did so Miss Tims pushed his hand away several times. Was Miss Tims really saying No when she pushed his hand away? If she had been we would expect that Miss Tims would have also stopped kissing Mr. Gavin, pulled away, sat up and told him firmly and explicitly that their lovemaking had ended. But that is not what Miss Tims did. As Mr. Gavin will testify, what Miss Tims did is to continue to kiss him

passionately, and rub her body against his even as she pushed his hand from her breast. Furthermore, when Mr. Gavin persisted in stroking Miss Tims' breasts, Miss Tims stopped pushing his hand away and, continued to kiss Mr. Gavin. When Mr. Gavin reached under her shirt, Miss Tims protested by saying "Oh Jim maybe we should stop." However, she made no attempt to push him away and in fact continued to kiss him and rub her body against his as she allowed him to caress her. It was my client James Gavin who ended the encounter, without knowing that Miss Tims' protests were token gestures made to assuage her own guilt and to give the impression of not being cheap he ended there lovemaking session and prepared to leave. Once he stopped his advances, Miss Tims became upset and asked him to leave. Not knowing why she was upset, he left her apartment when she asked him to. The fact that he left confirmed her fears that she had lost Mr. Gavin.

Can a woman be raped against her will? Of course she can. On the other hand if, as Miss Tims will testify, she tried her best to fight off Mr. Gavin, why were neither of them hurt? A physician who examined Miss Tims immediately after she talked with the police will testify that she was not beaten or bruised. A woman may not be as strong as a man but, certainly a woman is capable of defending herself by biting, kicking and scratching at a man who attacks her. However, the doctor who examined Mr. Gavin will testify that he had no marks on his body to indicate that he had engaged in a physical struggle. In short, ladies and gentlemen there is no evidence that indicates that Mr. Gavin forced Miss Tims to engage in sex with him against her will. On the contrary, the evidence indicates that Miss Tims concocted a story because she was terribly afraid that Mr. Gavin would not see her again. Mr. Gavin did not sexually assault Miss Tims. For that reason ladies and gentlemen I ask that you find him not guilty.

Thank you.

DIRECT EXAMINATION OF OFFICER PATRICIA O'MALLEY

P. Officer O'Malley please describe your involvement with this case.

O. My partner and I were cruising in the vicinity of Miss Tims' apartment when we received a radio call of a sexual assault complaint for her address. We drove to the address and Miss Tims let us in. She told us that she had been raped by her date and named him as Mr. James Gavin. She reported that she and Mr. Gavin had come back to her place after their date. She also stated that he and she began kissing on the couch, but that when she asked him to stop, he ignored her and continued making sexual advances toward her. She stated that she pleaded for him to stop and tried unsuccessfully to fight him off. However, she stated that he was too strong for her and that he forced himself on her having sexual intercourse with her against her will.

P. How did Miss Tims appear to you as she described these events?

O. Her eyes were swollen and red from crying, and she was agitated and upset as she

related her story.

P. What happened next?

O. I stayed with Miss Tims while my partner called an ambulance. Once the ambulance took her away my partner and I went to Mr. Gavin's address, read him his rights and arrested him for sexual assault.

P. How did Mr. Gavin react to his arrest?

O. He admitted that he had been with Miss Tims earlier that evening but denied that he had intercourse with her. Instead, he claimed that he had had sex with her the day before, but had left early that evening after a short petting session. I then asked him if it were true that he continued to press his sexual advances on Miss Tims even after she had asked him several times to stop and to leave her alone. He admitted that Miss Tims had asked him to stop, but claimed that he had complied. I asked him if Miss Tims has tried to push him away or to physically resist his advances in any way. He said that she had pushed his hand off her breast while asking him to stop and that this had been the reason he had stopped and left. After that Mr. Gavin refused to answer further questions until he had consulted a lawyer.

P. Thank you officer O'Malley. I have no further questions for this witness.

CROSS-EXAMINATION OF OFFICER O'MALLEY

D. Officer O'Malley when you asked Miss Tims what happened she stated that she invited Mr. Gavin into her apartment, sat with him on the couch and allowed him to kiss her, is that correct?

O. Yes.

D. And she reported that this kissing with Mr. Gavin was voluntary and of her own free will, is that right?

O. Yes.

D. Did she also tell you that she continued to kiss Mr. Gavin even while she pushed his hand away from her breast.

O. Yes.

D. In other words, she told you that she pushed him away, but at the same time kept encouraging him by continuing to kiss him, is that right?

O. She said that she did that at first, but that when he tried to take her panties off she stopped kissing him and told him to stop.

D. Tell me officer O'Malley, when you arrested Mr. Gavin did he deny that he had been with Miss Tims that night?

O. No, he admitted being with her.

D. He didn't hedge or try to lie about it. He told you straight out when you asked him that he had been with Miss Tims is that right?

O. Yes. He said from the beginning that he had been with Miss Tims.

D. In your experience do rapists usually confess to being with their victims as soon as you ask them, or do they often deny it.

O. Frequently they deny it.

D. But Mr. Gavin never denied being with Miss Tims did he.

D. No.

D. Did Mr. Gavin also tell you right from the beginning that Miss Tims gave him mixed messages, and that he wasn't sure that she wanted him to have sex with her?

O. Yes.

D. In other words, Mr. Gavin told you a consistent story right from the beginning and never tried to deny being with Miss Tims, is that right?

O. Yes.

D. Thank you officer O'Malley. No further questions your Honour.

DIRECT EXAMINATION OF COMPLAINANT

P. Miss Tims will you please give the Court your name, address, age and occupation.

C. My name is Janet Tims, I'm 22 years old and live 22 Sycamore Drive in Ottawa. I'm a third year student majoring in English Literature at Ottawa University.

P. Miss Tims, do you know the defendant in this case, Mr. James Gavin?

C. Yes, he's sitting right over there at the defence table. He's the man who raped me.

P. In your own words, please tell the Court how you first met Mr. Gavin.

C. Well, about two weeks before the night Mr. Gavin raped me I was sitting in the Cafeteria in school having lunch with some friends. Mr. Gavin was an acquaintance of one of my friends, and he came over to our table and joined us. After a while, he began talking to me. I liked him at the time. He was bright and witty, and we stayed and talked for about half an hour after the others had left.

P. What did you talk about?

C. Just casual things. School, the courses we were each taking, things like that.

P. Did you discuss any intimate or personal topics.

C. No.

P. Then what happened.

C. Well, Mr. Gavin said he had to get to class, but before he left he asked if I'd like to go to dinner with him.

P. And how did you respond?

C. I said sure, I'd like to go, and I gave him my phone number so he could call me to make the arrangements.

P. And did he call you?

C. Yes. A couple of nights later he called and asked if I'd like to go to dinner on Friday. I said that I would, so that Friday evening we went out to an Italian restaurant.

P. How did you get to the restaurant?

C. Mr. Gavin picked me up at my apartment with his car and drove us.

P. When he came to pick you up did he come into your apartment?

C. No. He just rang the buzzer and I came down and met him at the front door.

P. Who paid for the dinner?

C. Mr. Gavin paid. I offered to chip in, but he said that he would like to pay.

P. What did you talk about at dinner?

C. Just the usual casual kind of stuff. I talked about what I was majoring in and the kind of job I'd like after I graduated, and he talked about the same kind of stuff.

P. Did you talk about any more personal or intimate topics?

C. No, not really. I mentioned how someday I would like to get married and start a family, and he said that someday he would like to do the same, but that's about as personal as the conversation became.

P. Did you have anything to drink at dinner?

C. Yes. In fact I had too much to drink. I liked Mr. Gavin. He seemed nice and I was nervous and wanted to make a good impression, so I had a couple of glasses of wine to calm myself down. Mr. Gavin kept filling my glass up again and, I guess because I wanted to make a good impression and appear sophisticated I kept drinking. By the time we left the restaurant I was pretty wobbly on my feet.

P. What happened after you left the restaurant?

C. Mr. Gavin drove me home and parked the car and then started kissing me in the car. I was pretty drunk so I was much less inhibited than I would have normally been. Also I liked him and wanted to get to know him better, and didn't want to disappoint him, so I began to kiss him and make out with him in the car. When he started to undo my blouse I said that I thought we should stop because someone might see us. He then suggested that we go up to my apartment. At first I said no, but he seemed disappointed at that, and so I said OK as long as he only stayed for a little while. Once we got up to my apartment he began kissing me again and taking my clothes off. Even though I was drunk I knew that I shouldn't let him continue. I mean I really liked him and wanted to see him again, but I hardly knew him. I really felt mixed up inside. I wanted to stop him, but at the same time I didn't. I was afraid that if I stopped him after already going as far as I had he would be mad. I guess because of all I had had to drink I really wasn't thinking straight. At any rate, because of my mixed feelings I didn't do anything. I just let him continue and he went ahead and had sex with me. Later he left and went home.

P. When did you see Mr. Gavin again?

C. Both of us had exams coming up so we made a date to go study together at the library the next night.

P. When did you make this date?

C. In my apartment after we had finished having sex.

P. And the date was for when exactly?

C. The next evening. Saturday, April 10.

P. And what happened on this date?

C. We met at the library at about 5 Saturday evening and studied together for a couple of hours. Around 7:30 we took a break and went to a restaurant close by for hamburgers. Then we went back to the library and studied till about 10 o'clock. By that time we were both pretty tired of studying and decided to go to the pub. We spent about half an hour in the pub, and then Mr. Gavin drove me home.

P. Did you have anything to drink in the pub?

C. Yes, we each had a beer.

P. You had only one beer?

C. Yes. Only one.

P. What happened after Mr. Gavin drove you home?

C. I invited him to come up to my apartment for a cup of tea. I was sober this time so I felt I had more control over myself than the night before. Also I wanted to talk with Mr. Gavin about what had happened and about how I had let things go further than I should have. I mean, I wanted to go on seeing him and everything, but I wanted him to know that I wanted more than just a sexual relationship. I also wanted to know that he liked me for myself and not just because I had given him sex. He said he'd love to so we went up. Mr. Gavin went into the living room and sat on the couch and I went into the kitchen and made us each a cup of tea. Then I went into the living room and joined Mr. Gavin on the couch.

P. Then what?

C. Mr. Gavin leaned over and started kissing me and playing with my hair. At first we just kind of cuddled and kissed and I enjoyed that because I liked Mr. Gavin. After a few minutes I noticed that Mr. Gavin began breathing more heavily and then he began stroking and squeezing my breasts. After what had happened the night before I wasn't ready to get sexually involved so soon, so I pushed his hand aside. But after a few minutes he began stroking my breasts again. I pushed his hand away

a few times but he kept coming back to stroke my breasts. After a while I just stopped pushing his hand away and let him stroke my breasts. I mean I knew I wasn't ready to have intercourse with him again, but I didn't want to reject him or give him the idea that I didn't like him. Besides I liked kissing him and having him stroke my breasts, it felt nice and made me feel close to him. Then he undid my blouse and bra and began feeling my breasts under my bra. I was starting to get more and more aroused and I knew that he was to, because his breathing was getting heavier. I was starting to have mixed feelings again. I liked what he was doing and didn't want him to stop, but I knew that if I didn't stop him soon he would want to go all the way, and I didn't want that to happen again. After he had fondled my breast for a while he slipped his hand under my skirt. At first I let him rub me down there, but then he started to take my panties off. I knew I didn't want to go that far, so I stopped kissing him and told him to stop. He kept trying to get his hands inside my panties, so I tried to twist out of his grasp, and kept telling him to please stop. When he continued despite my protests I began to get upset and scared. I tried to pull away from him, but he was very strong and I couldn't get out of his grasp. I pushed at him and tried to hit at his shoulders but I couldn't get away. He had me pinned against the couch. He held me down with his body and one hand and then with his free hand he took off my panties. By this time I was terrified and crying. I kept telling him to please stop and to leave me alone but he wouldn't listen. He undid his pants with his free hand and then forced himself between my legs. I tried to hold my legs together, but he got his knee between my thighs and forced them open. Then he got in between and had sex with me. After he was finished he got off me and got dressed. Then he told me to relax and tried to get me to calm down. He tried to hug me again, but I was hysterical and told him to leave me alone and to go away. Then he left my apartment.

P. Then what happened?

C. Once he was out of the apartment I rushed to the door and locked it. I was terrified that he might come back. I was dazed and shaking and I couldn't stop crying. For about half an hour I just curled up on the living room rug and cried. Finally, after I got some control over myself I called the police and told them that Mr. Gavin had raped me.

P. Miss Tims, from the time Mr. Gavin started trying to get your panties off till the time he had finished forcing you to have intercourse, did you do anything to give him the impression that you wanted him to continue his advances?

C. No absolutely not. I was crying and hysterical. I kept screaming for him to stop. I hit him as hard as I could and tried to twist away but he just wouldn't stop no matter what I did.

P. Was there any doubt in your mind that Mr. Gavin knew you wanted to stop.

C. No doubt at all. He had to know. I mean I was punching him and twisting to try and keep his hand from getting my panties off, and when he tried to force his knee between my thighs I tried to cross my legs to keep him out, but he was just too strong for me, and no matter how much I pleaded and cried he wouldn't listen and wouldn't stop.

P. Thank you Miss Tims. No further questions your Honour.

CROSS-EXAMINATION OF COMPLAINANT

D. Miss Tims, lets go back to that day in the school cafeteria when you first met Mr. Gavin. Now, you stayed and talked with him for a half hour after everyone else had left, is that right?

C. Yes.

D. In fact, you described him as being witty, and bright and as liking him, didn't you?

C. Yes.

D. Well, If you liked him, did you want him to like you as well?

C. Yes.

D. Well then, in the cafeteria, did you do or say things to give Mr. Gavin the impression that you were attracted to him?

C. Well I was polite and interested in what he said, and paid attention to him, if that's what you mean.

D. I mean, isn't it true that you said and did things in the hopes that Mr. Gavin would like you enough to want to see you again?

C. Yes. I wanted to see him again. At first I liked him.

D. And then again during your first date at the restaurant, didn't you do and say things to give Mr. Gavin the impression that you enjoyed dating him, and would like to see him again?

C. Yes.

D. And on your very first date with Mr. Gavin you voluntarily kissed with him in his car and then voluntarily invited him into your apartment and then voluntarily had sexual intercourse with him, is that right?

C. I knew I shouldn't have slept with him so soon but, yes, I did.

D. And on your library date as well, didn't you go to the library so that you could be with Mr. Gavin in the hopes that he would keep liking you and being attracted to you?

C. I went to the library with him because I liked him, and yes, at that point I wanted him to like me, and keep on seeing me.

D. At the time you met Mr. Gavin were you dating anyone else?

C. No.

D. Had you dated anyone seriously in the few months before you met Mr. Gavin?

C. No. No one seriously.

D. Miss Tims, on your restaurant date with Mr. Gavin you mentioned that you wanted to marry and have a family, is that right?

C. I said that someday in the future I would like to marry and have a family.

D. Were you pleased when Mr. Gavin said that he wanted the same things for himself.

C. I guess so. It indicated that we were compatible in that respect.

D. At anytime during your dates with Mr. Gavin did you hope that your relationship might become serious?

C. I liked him, but it was too early to think about getting serious. I only saw him a couple of times.

D. Miss Tims, it might have been too early in the relationship to actually verbalize to Mr. Gavin that you were serious, but it wasn't too early to think that he was someone that you could get serious about. So let me ask you again, did you at any time think that Mr. Gavin was someone you could have gotten serious about.

C. Yes.

D. After you had sex with Mr. Gavin on your first date you saw him the very next evening for a date at the library, is that right?

C. Yes.

D. And after studying at the library with Mr. Gavin for several hours, and having hamburgers together, you went with him to a pub and had drinks is that right?

C. We went to the pub and he bought me a beer, that's right.

D. And after that Mr. Gavin drove you home?

C. Yes.

D. When you got home you invited Mr. Gavin into your apartment isn't that right?

C. Yes.

D. He didn't break in did he, or force you to let him in?

C. I invited him in for tea.

D. And after the tea was made you sat down on the couch next to Mr. Gavin, is that right?

C. Yes.

D. Were there any chairs in your living room? Any place for you to sit other than the couch?

C. Yes.

D. But you chose to sit on the same couch as Mr. Gavin rather than in some other chair where it would have been awkward for him to touch or kiss you, is that right?

C. I sat on the couch with Mr. Gavin because I liked him and wanted to get to know him better.

D. And while you sat on the couch together you and Mr. Gavin began to kiss is that right?

C. Yes.

D. And these were lingering kisses on the lips is that right?

C. Yes.

D. And you didn't object?

C. No, not at that point.

D. Isn't it true that you let Mr. Gavin run his tongue along your lips without objecting?

C. Yes.

D. And you let him put his tongue in your mouth didn't you?

C. Yes.

D. And during these kisses you put your tongue in his mouth didn't you?

C. Yes.

D. So Miss Tims, it seems safe to say that you and Mr. Gavin were kissing passionately on your couch is that right?

C. Yes.

D. And you were enjoying these passionate kisses?

C. At that point yes.

D. And you were not objecting to his kissing you passionately?

C. No. Not at that point.

D. Along with passionate kissing you and Mr. Gavin were hugging and holding one another is that true?

C. Yes.

D. And you did not object to this hugging or holding did you?

C. Not at first, no.

D. During this hugging and holding your bodies must have touched and you must have rubbed your bodies together, isn't that true?

C. Yes.

D. And you didn't object to your bodies rubbing together did you?

C. Not at first, no.

D. After passionate kissing and hugging and rubbing Mr. Gavin moved his hand to your breast did he not?

C. Yes, and when he did that I pushed his hand away.

D. Did you also stop kissing him at that time, and get up from the couch?

C. No.

D. In fact, even as you pushed Mr. Gavin's hand from your breast you continued to kiss him, isn't that true?

C. Yes.

D. In fact, you testified that Mr. Gavin stroked your breasts on several occasions and at these times you continued to kiss him even as you pushed his hand away isn't that true?

C. Yes

D. And then you stopped pushing his hand away and allowed him to stroke your breasts through your blouse and bra is that right?

C. Yes.

D. Did you object when Mr. Gavin reached your blouse?

C. Yes.

D. Miss Tims, while you allowed Mr. Gavin to reach under your blouse did you say to him "Oh Jim, maybe we should stop?"

C. Yes.

D. But despite saying that you didn't try to stop Mr. Gavin from fondling you did you?

C. No.

D. You testified that you noticed that Mr. Gavin began breathing heavily as he stroked your breasts, is that right?

C. Yes.

D. Did you assume that he was breathing heavily because he was becoming more and more sexually aroused?

C. Yes.

D. Even after you noticed Mr. Gavin breathing heavily you continued to kiss with him passionately isn't that right?

C. Yes.

D. OK. Miss Tims, let me see if I can summarize what you've said so far. You met Mr. Gavin through friends, liked him, and felt attracted toward him. You hadn't found anyone to date seriously for several months, and when Mr. Gavin came along he seemed to be what you were looking for. You had things in common, he was bright and witty, you both wanted a family some day, and you were attracted to him and wanted him to be attracted to you and to keep on seeing you. Am I about right so far?

C. Yes. I guess so.

D. Mr. Gavin took you out on two dates, and he paid all expenses both times. After the first date you kissed him passionately in his car and then invited him up to your apartment where you voluntarily had sexual intercourse with him. After the second date you again invited him into your apartment, willingly sat with him on the couch, willingly kissed him passionately and repeatedly, willingly let him put his tongue in your mouth, willingly, put your tongue in his mouth, willingly let your bodies rub together, and continued kissing him passionately even as you pushed his hand from your breasts. Then you stopped pushing his hand from your breast and, in fact, allowed him to reach under your blouse.

C. Yes, but then I...

D. Thank you Miss Tims, your yes was the answer to my question. Now, while you were passionately kissing Mr. Gavin, were you enjoying those passionate kisses?

C. Yes. At first I was.

D. And did you also become sexually aroused?

C. Yes.

D. Isn't it also true that you wanted Mr. Gavin to have sexual intercourse with you?

C. No. It was too early for that. I didn't know him well enough for that.

D. Come now Miss Tims, you just testified that you had engaged voluntarily in sexual intercourse with Mr. Gavin only the day before. Now, the very next day you again became sexually aroused as you passionately hugged and kissed Mr. Gavin. It is true is it not that as you hugged and kissed Mr. Gavin you wanted him to continue his lovemaking?

C. I wanted to continue hugging and kissing Mr. Gavin, and being close to him, but I didn't want to have sex with him again the way I had the night before. I had been drunk the night before and went further than I should have with someone I didn't really know very well, and I wanted to wait and get to know him better before having sex with him again.

D. Isn't it true that you really wanted to have sex with Mr. Gavin but put up a token protest because you didn't want him to think you were cheap or easy.

C. I didn't want to have sex with him because I didn't want to think of myself as cheap, and I wanted to get to know him better first.

D. Miss Tims you testified that you tried to fight Mr. Gavin off but that he overpowered you, and forced you to have intercourse is that correct?

C. Yes.

D. In fact, you didn't fight at all did you?

C. I fought as hard as I could, he was too strong for me.

D. In your supposed struggle with Mr. Gavin did you suffer any broken bones?

C. No.

D. Any of your teeth knocked out?

C. No.

D. Did you get a black eye?

C. No.

D. Any cuts or bruises on your face or body?

C. No.

D. You testified that you tried to fight off Mr. Gavin, is that right?

C. Yes, I tried to push him off of me and to hit him but he was too strong.

D. Did you gouge him in the eye with your fingers?

C. No.

D. Did you kick him in the testicles?

C. No.

D. Did you scratch him hard enough to make him bleed, or hit him hard enough to give him a black eye or some other bruise?

C. I hit him as hard as I could but he wouldn't stop. I didn't have room to kick him or to hit him harder because of the way he had me pinned against the couch.

D. Miss Tims, you have just testified that in your supposed struggle with Mr. Gavin neither you nor he was hurt. Neither of you suffered bruises, and neither of you bled. Although you claim that you fought Mr. Gavin as hard as you could you also claim that you never kicked him or scratched him or gouged him. Now the real truth is that you never really fought Mr. Gavin very hard because you never really wanted him to stop. You put up a token resistance because nice girls are supposed to, and you didn't want to appear cheap by having sex two nights in a row without some show of protest. But in fact what you really wanted was to have sexual intercourse with him. Now that's the real truth isn't it Miss Tims?

C. No. I fought him as hard as I could. I pushed him and tried to get away, and when I couldn't I became more and more frightened and panicked. I kept telling him to stop, but he wouldn't stop.

D. You kept pushing him away while at the same time you continued to kiss him passionately is what you testified to earlier. What that means is that you really wanted Mr. Gavin to ignore your protests and have sex with you doesn't it?

C. When we first started kissing I wanted him to continue, yes. But later, when he started taking my panties off, and ignoring my protests I wanted him to stop, but he wouldn't stop no matter how much I tried to make him.

D. Miss Tims, you testified that before sitting down on the couch with Mr. Gavin you liked him, hoped to get to know him better, and hoped to continue going out with him, is that right?

C. Yes.

D. After Mr. Gavin stopped his advances you knew he wouldn't see you again didn't you?

C. After he raped me I didn't ever want to see him again.

D. Miss Tims, I submit that Mr. Gavin did not rape you. If you had really struggled with Mr. Gavin as you claim, then one of you would have been badly hurt. But neither of you was hurt at all. Obviously there was never any serious struggle. Instead, you wanted to have sex with him because, as you testified yourself, you liked him, wanted him to like you, and wanted to continue seeing him. Moreover, you wanted to have sex with him because you were feeling passionate and sexually aroused, and were sexually attracted to him. However, when Mr. Gavin stopped his advances, you realized that Mr. Gavin was not going to see you again. You were hurt by this and angry and, therefore, after Mr. Gavin left your apartment you called the police and falsely accused him of rape. Now that's what really happened isn't it Miss Tims?

C. I did not falsely accuse Mr. Gavin of rape. I struggled with him but he overpowered me and raped me. I was terrified. I never wanted to see him again. I called the police because he raped me.

D. Thank you Miss Tims. No further questions your Honour.

DIRECT EXAMINATION OF DR. SUZANNE BARLOW

P. Dr. Barlow please tell the court your name, occupation and connection with this case.

B. My name is Suzanne Barlow. I am a resident physician at the Ottawa General Hospital and was the chief resident in the emergency room the night that Miss Tims was brought in for examination.

P. Did you personally examine Miss Tims.

B. Yes.

P. Please describe the results of your examination.

B. Miss Tims' eyes were red and swollen from crying. She was shivering and agitated and stated that she had been raped. A gynecological examination confirmed that Miss Tims had recently had sexual intercourse and a sample of semen was taken from her vagina for later testing.

P. Was Miss Tims' psychological condition consistent with that of a rape victim.

B. Yes. As I stated, she was agitated and crying. She said that she had been raped and she was afraid to be left alone.

P. Thank you Dr. No further questions.

CROSS-EXAMINATION OF DR. BARLOW

D. Dr. Barlow, did Miss Tims exhibit any evidence of having been beaten?

B. No.

D. She didn't have any broken bones, no teeth knocked out, no black eyes, nothing like that?

B. No. There was no indication that she had been beaten.

D. Dr. Isn't it true that rape victims often have evidence of tearing in the vaginal area.

B. Yes. Often times the forced insertion of the penis or some other object into the vagina when it is insufficiently lubricated causes tearing and bleeding of vaginal tissues. Rape doesn't always produce such injuries, but frequently it does.

D. Was there any such injury noted in Miss Tims' vagina.

B. No.

D. What causes a woman's vagina to lubricate?

B. The normal cause is sexual arousal.

D. Doctor, when you say that the sperm sample removed from Miss Tims' vagina was recent, I would like to ask how long semen will remain in the vagina following intercourse?

B. Expert opinion may vary, but generally semen can remain in the vagina for two to

three days following intercourse.

D. Thank you Dr. No further questions.

DIRECT EVIDENCE OF DR. NORMA SHAPIRO (INTERNIST)

D. Dr. please tell the court your name affiliation and involvement in this case.

S. I'm Dr. Norman Shapiro, an internist at the Ottawa General Hospital. I was asked by the police to do a physical examination on Mr. James Gavin.

D. And what were the results of your examination?

S. That Mr. Gavin is a healthy, well nourished 25 year old Caucasian male who stands 6 feet tall and weighs 200 pounds.

D. Did you find any bruising on Mr. Gavin's hands that would indicate that he had hit someone with his fists?

S. No.

D. Tell me Dr. why do the police ask physicians to examine suspected rapists.

S. Basically for two reasons. First to determine if there is evidence such as bruised fists that would indicate that the suspect had inflicted injuries on his victim, and second, to find physical evidence that the victim struggled with him.

D. What kind of physical evidence would indicate that the victim had struggled?

S. For instance, bruises, scratches, cuts, or bite marks on the suspect that were inflicted by the victim would be evidence that the victim had resisted her attacker.

D. Did you find any such physical evidence on Mr. Gavin to indicate that Miss Tims had struggled with him?

S. No.

D. Thank you Dr. No further questions.

CROSS-EXAMINATION OF DR. NORMA SHAPIRO

P. Dr. Do rape victims always inflict damage on their attacker.

S. No, frequently they don't inflict any damage.

P. Does the absence of such physical damage to the rapist indicate that his victim wasn't really raped and consented voluntarily.

S. No, not at all. Most men are bigger and stronger than most women and men are also much more likely than women to know how to fight. In many cases a rapist can subdue his victim without suffering any damage. In fact, many rape victims are too terrified to put up much of a physical struggle. Furthermore, it's not a particularly good idea for women to struggle with their rapist. Those that do are often very badly beaten and sometimes even killed.

P. Thank you Dr. No further questions.

DIRECT EXAMINATION OF DEFENDANT

D. Mr. Gavin, please give the Court your full name, address and occupation.

G. James Gavin. I'm 25 years old and live at 325 Bell St. in Ottawa. I'm currently studying for my Master's degree in Computer Science at Ottawa University.

D. Before this current charge had you ever been arrested for anything?

G. No sir.

D. Never been picked up for drunk driving, never had the police come over to complain the music was too loud in your apartment, never been picked up on any kind of sex charge, nothing like that?

G. No sir. Before this happened I'd never been in any trouble with the police.

D. Is Miss Tims the first girl you ever dated?

G. No. I've dated a number of different women.

D. Have any of them ever accused you of rape?

G. No sir.

D. Ok. Mr. Gavin, in your own words please tell the Court about the events that led up to you being charged with sexual assault.

G. I met Miss Tims in the school cafeteria through some friends. We seemed to hit

it off in our first meeting, so I asked her to go to dinner. She agreed and gave me her phone number so I could call her. I called her a couple of days later and made the arrangements. The night of our date I picked her up at her place and we went out for Italian food. I enjoyed myself and she also seemed to have a nice time. After we left the restaurant, I drove her home. I parked on the street in front of her building and we began kissing in the car. After a while she said that someone might come along and see us, so I suggested that we go up to her apartment. She agreed so we went up. Once inside we continued kissing and then one thing led to another and we had sex. Afterwards we hugged for a while and then we made a date to meet the next evening to study together in the library. Then I left and went home. The next night we studied in the library for a couple of hours, went out and grabbed some burgers and then went back to the library and studied some more. Around 10:00 we were both about studied out, so we went to the pub, had a couple of beer and then drove back to her place. Miss Tims invited me in again and we sat together on her living room couch. After a couple of minutes we began making out.

D. Can you please describe for the Court what you mean by making out.

G. We began kissing and holding one another and stroking one another. At first it was just kind of light kissing, but both of us started getting aroused and we began French kissing.

D. How did you know that Miss Tims was becoming aroused?

G. Well, she began breathing heavier, and holding me tighter, and she kind of moaned when I nibbled her ear and put my tongue in it.

D. By French kissing do you mean that you put your tongue in Miss Tims' mouth?

G. Yes.

D. Did she object?

G. No. She liked it and did the same thing to me.

D. Please continue Mr. Gavin.

G. Well we kept going on that way for a while and then I reached under her blouse and she told me she thought we should stop.

D. Is this the first time she had asked you to stop?

G. At first, when I began stroking her breasts she would push my hand away, then we would keep kissing and hugging, and I would put my hand back. That went on

for a little while.

D. Why did you put your hand back to Miss Shaw's breasts if she kept pushing it away?

G. Well she pushed it away, but at the same time she kept kissing me and getting more aroused, and rubbing against me. I thought at first that she wanted me to continue. I mean, when your making out with a woman you don't know too well, she often says that she wants to stop, or she pushes your hand away, but she doesn't really mean it. She does it to get across the idea that she's not cheap or easy and doesn't do this with everyone. I mean. If a woman really wants you to stop she makes it clear. She stops kissing you and says no.

D. Then it was your impression that Miss Tims' protestations were not genuine, and that, despite them she really wanted you to continue your advances, and wanted you to have intercourse with her? Is that right?

G. I wasn't sure. There was certainly no doubt in my mind that Miss Tims was enjoying our make out session. At first I thought that she was just playing around, but when she verbally asked me to stop I knew she was serious. The situation was confusing. I felt that maybe we had rushed things a little on the first date and that we should take things slower. When Miss Tims asked me to stop after I reached under her blouse I assumed that she was trying to tell me the same thing so I stopped.

D. Mr. Gavin, is it true that you pinned Miss Tims against the couch so that she couldn't escape?

G. No, at first we were sitting up on the couch kissing, but as we both got more aroused we were sort of half lying down on the couch and half sitting on it. I was partly laying on top of her and we were rubbing our bodies together as we kissed. Miss Tims was squeezed against the back of the couch, but I wasn't pinning her to it. I was half lying on top of her kissing her.

D. Isn't it true that Miss Tims stopped kissing you, asked you to stop, and struggled to free herself from you?

G. It was me that stopped kissing her. I mean, after I reached under her blouse she said that she thought we ought to stop, so I stopped kissing her. She was pretty aroused by that point and I wasn't sure if she really wanted me to stop. I thought it was best not to rush things. I really liked Miss Tims and so I played it safe. I didn't want to jeopardize our relationship. I figured that there would be plenty of future opportunities to go further. Besides we both had exams coming up so I thought it would be best if we did call it an early night and get some rest.

D. How did the situation end.

G. After she said she thought we should stop, I sat up and said that maybe I should go. I started to leave and noticed that Miss Tims was upset and crying. Sometimes, when women have sex with you on the first or second date they feel guilty because they think you'll think they're cheap. I thought that was how Miss Tims might be feeling, so I told her to relax and that everything would be OK. But she kept crying, and then she told me that she thought I should leave.

D. Then what?

G. Well, I didn't want to make her feel any worse, so I left.

D. Were you angry or upset with Miss Tims when you left?

G. No, not at all. I liked Miss Tims and thought that our relationship might go somewhere. I felt bad that she was upset, but I didn't want to stay around after she had asked me to leave.

D. At the time you left were you planning to see Miss Tims again?

G. Yes. I planned to call her the next day to see if she wanted to go out on another date. I was trying to think of someplace special that I could take her when the police showed up and placed me under arrest. I didn't understand it at all.

D. Thank you Mr. Gavin. No further questions your Honour.

CROSS-EXAMINATION OF DEFENDANT

P. Mr. Gavin, from the time you began trying to take off Miss Tims' panties until you left her apartment she did not kiss you, or stroke you, or make any physical gesture to indicate that she wanted you to continue your sexual advances, isn't that true?

D. I never tried to take Miss Tims' panties off. I went home.

P. Was it hard to tell what she meant when she begged you repeatedly to please stop trying to have sex with her and to leave her alone?

D. I told you we didn't have sex.

P. Mr. Gavin, from the time you began taking off Miss Tims' panties everything she said and did was consistent in indicating that she wanted you to stop your sexual

advances, isn't that true?

D. I didn't try to take her panties off.

P. Miss Tims hit you with her fists on the shoulders while pleading and yelling for you to stop, didn't she?

D. NO.

P. Miss Tims was repeatedly hitting you and yelling and pleading for you to stop, was she not.

D. No.

P. Mr. Gavin. Miss Tims has testified that she was yelling and pleading for you to stop your advances, and at these times was not kissing you or doing anything else to encourage you. Is this true.

G. No.

P. You claim that you had left the apartment, but the truth is that you methodically pulled off her panties, forced your knee in between her legs while undoing your own pants. You knew exactly what you were doing in those instances didn't you Mr. Gavin?

G. I didn't do any of those things.

P. Despite Miss Tims' yelling and repeated pleas for you to stop you though she wanted you to continue?

G. No.

P. Despite her hitting you repeatedly with her fists, despite her trying to free herself from the couch, despite her desperately trying to push you away, despite all of this and while she screamed and yelled and begged for you to stop, you thought she wanted you to continue?

G. Like I said before, when we got to Miss Tims' apartment, we sat on the couch and started making out. We were kissing and holding one another and I attempted to stroke her breast. At first, she pushed my hand away but when I kept putting it back she eventually stopped pushing my hand away. When I reached under her blouse she told me that she thought we should stop so I did. I stopped and shortly thereafter, I left.

P. Once you had your penis inside of her she was so hysterical and frightened and overwhelmed that she couldn't fight any more isn't that true?

G. I never had my penis inside of her. I left before anything went that far.

P. Miss Tims is 5 feet 4 inches tall and weighs 112 pounds. How tall are you Mr. Gavin?

G. Six feet.

P. And how much do you weigh?

G. 200 pounds.

P. Isn't it true that Miss Tims tried to keep her legs tight together, and that you forced them apart with your knee in order to get between her legs?

G. No.

P. Do you think that your ability to pry open Miss Tims' legs with your knee had anything to do with the fact that you are a 6 foot 200 pound man and she is a 5 foot four inch 112 pound woman?

D. Objection your Honour, calls for a conclusion.

J. Sustained.

D. I'll withdraw the question your Honour. Mr. Gavin, after you finished having intercourse with Miss Tims did she thank you, or tell you how happy she was that you persisted, or how warmly she felt about you? Did she say anything at all along those lines?

G. I didn't have sex with her, but no, she didn't say anything like that before I left.

P. In fact, she was crying hysterically wasn't she?

G. When I left, she was crying and I tried to calm her down, but she wouldn't let me.

P. Didn't it surprise you that a woman who had supposedly submitted voluntarily to sexual intercourse with you would, afterwards, be crying hysterically and telling you to get out of her apartment?

G. I didn't have sex with her. The fact that she was crying confused me. I didn't

know why. As I said earlier, sometimes girls who have sex with you after only one or two dates feel guilty and cry but I didn't know what the problem was that night, I just left.

P. OK. Mr. Gavin let me see If I have this straight. From the time you started trying to take off her panties Miss Tims begged and pleaded for you to stop and leave her alone. From that time on she did nothing to encourage your advances and, in fact, hit you repeatedly, tried to push you away, tried to prevent you from getting between her legs, and cried hysterically. You finally managed to pry open her legs and had sexual intercourse with her. Afterwards, she cried hysterically and told you to leave her apartment. But you insist that, you were present for none of this. You stopped your advances, Miss Tims started crying and you left. Is that what you are saying?

G. I'm saying that when Miss Tims asked me to stop, I stopped. She didn't try to fight me off and we didn't have sex. I have no idea why she started crying but it wasn't because I raped her.

P. I have no more questions your Honour.

CLOSING STATEMENT FOR DEFENCE

Members of the jury, in our legal system it is the task of the prosecution to prove beyond a reasonable doubt that a defendant is guilty of the crime with which he is charged. The defendant does not have to prove that he is innocent. Instead, his innocence is assumed until the prosecution has proved otherwise. Ladies and gentlemen you have all heard the evidence in this case, and I think that it should be clear to any reasonable person that the evidence falls far short of proving that Mr. James Gavin sexually assaulted Miss Janet Tims. Is there reasonable doubt to the contrary? Of course there is. A great deal of reasonable doubt. In fact, there is more than just reasonable doubt. The evidence, when taken as a whole clearly exonerates my client. That evidence indicates that my client stopped his advances towards Miss Tims and left her apartment because he believed that Miss Tims wished him to stop.

Members of the jury, let us review the evidence. My client had two dates with Miss Tims. On the first she allowed him to pay for dinner, had too much to drink, kissed him passionately in his parked car and then invited him into her apartment and voluntarily had sexual intercourse with him. Miss Tims herself testified that she liked my client, wanted to see him again, enjoyed his company, and wanted him to like her. In our society, people who feel this way about one another and who have sex together on one date often become confused as to how they should treat one another. Therefore, it was only reasonable for Mr. Gavin to assume that Miss Tims' protests were real rather than just token gestures. Everything that happened between Miss

Tims and my client on their second date only served to confirm his expectation that Miss Tims felt that their relationship had great potential. After studying at the library the couple went drinking and then, at 10:00 in the evening, Miss Tims invited Mr. Gavin back to her apartment. Why would a woman invite a date whom she liked back to her apartment late in the evening unless she considered this to be a serious relationship with future potential. Especially if the date was someone she had just the night before become sexually intimate with? Once inside the apartment all of Miss Tims' behavior served to confirm my client's expectation that she was someone special whom he should take care not to lose. She sat with him on the couch and thereby made herself available for easy physical contact. If she hadn't wanted him to be there, why didn't she sit in a different chair where Mr. Gavin couldn't reach her? Obviously, she sat on the couch with Mr. Gavin because she expected and hoped that Mr. Gavin would initiate sexual overtures toward her. Because Mr. Gavin is a healthy, normal heterosexual male, Miss Tims was not disappointed. Mr. Gavin began to kiss and hug her. Did Miss Tims respond to these advances by pulling away and informing Mr. Gavin that she was not interested in continuing? No, she did nothing of the kind. Instead, she kissed and hugged him back. Ladies and gentlemen, Miss Tims, herself, admitted under cross-examination that these were deep passionate kisses in which the two parties inserted their tongues into each others mouths. Miss Tims also testified that she was not merely the passive recipient of Mr. Gavin's advances. She herself testified how she actively kissed him back, how she held and hugged him, how she inserted her tongue into his mouth. Moreover, Miss Tims testified how she noticed that Mr. Gavin was becoming sexually aroused. How did she respond to his arousal? She continued kissing him passionately and rubbing her body against his, she let him fondle her breasts, and she let him put his hand under her shirt. Members of the jury, under these circumstances how could Mr. Gavin have come to any conclusion other than the obvious one that Miss Tims liked him, and wished for their relationship to continue?

Ladies and gentlemen Miss Tims testified that she pleaded with my client to stop his advances and even tried to fight him off. But when we carefully examine what she really did, we find that she communicated very mixed messages about what she wanted my client to do. Miss Tims testified that, when my client began stroking her breasts she eventually pushed his hand away. Did she also at that point pull away from his embrace, stop kissing him, get up from the couch and state firmly that their lovemaking was at an end? No, she did no such thing. On the contrary, even as she pushed his hand away from her breasts, Miss Tims continued to passionately kiss and embrace my client. Furthermore, when my client continued to return his hand to her breast she stopped pushing it away and after that allowed him to actually fondle her breasts without further protest. During this time, as she continued to passionately kiss my client she knew that he was becoming more and more sexually aroused. In fact, she testified that she herself was by this time sexually aroused. Obviously, my client was aware of her sexual arousal just as he was aware of his own. Here then was the situation of my client. He was in a state of high sexual arousal engaged in passionately kissing, hugging and stroking an attractive woman who he liked and who

liked him. This woman was herself in a high state of sexual arousal and her arousal was evident to my client. Not only was this woman highly aroused sexually, she was eagerly receptive to his sexual advances. She kissed him back, hugged him and allowed him to passionately embrace her, and fondle her breasts. When my client stroked Miss Tims' breast she did not pull away. She pushed his hand away but then allowed it to remain without further protest and at the same time she continued to passionately embrace him. At this time, my client concluded that Miss Tims wanted him to continue. Obviously, if she had really wanted him to stop she would have stopped her own sexual behavior toward him. But she did not stop her passionate behavior. She continued it even as she pushed away my clients hand. Obviously, Miss Tims did not want my client to stop his passionate embraces. Obviously, despite her token protestations what she really wanted was for him to continue. Obviously, what she really wanted was to be taken sexually despite her token protestations. Members of the jury, my client is not a mind reader and did not interpret the situation in the same way. He stopped his advances on Miss Tims because he thought that she wished him to stop. Given that Miss Tims' passionate embraces had produced in him an extremely high level of sexual arousal he knew that if they didn't stop then, their sexual activity would continue to its natural termination. Although her body and actions were saying yes, she had verbally stated that she did not want to continue and my client, though confused, did not want to jeopardize their relationship by going any further.

Members of the jury, Miss Tims testified that she tried her best to fight off my client, and that her attempts in this regard were not simply token gestures of resistance that she wished him to overcome. But did she really try to fight him off? Ladies and gentlemen recall the testimony of the physicians that examined both Miss Tims and Mr. Gavin. Neither of them was bruised, neither showed any evidence of having engaged in a real physical struggle. Recall especially the testimony of the doctor who examined Miss Tims. Recall the doctor testifying how rape victims often have tearing in their vaginal tissues, and that such tearing occurs because during rape intercourse is performed when the victim's vagina is not lubricated. As the doctor testified, there was no tearing of tissue in Miss Tims' vagina. Why? Because she wasn't raped. There was no damage to her vagina. If Miss Tims had made a serious and concerted attempt to stop my client why wasn't he scratched? Why was there no evidence on his body of bite marks? Certainly Mr. Gavin is larger and stronger than Miss Tims, but can this fact really explain the total failure of Miss Tims to inflict any damage to my client while she was supposedly struggling with all her might? Members of the jury, Miss Tims testified that she hit Mr. Gavin with her free hand. Why then did she not use this same free hand to reach down and grab his testicles. You can be well assured, members of the jury, that had Miss Tims done that, she would have had little difficulty in getting Mr. Gavin's complete and undivided attention. But Miss Tims did nothing of the kind. She did not put up a real struggle with Mr. Gavin because Mr. Gavin had already left.

Why did she pretend she wanted him to stop? Ladies and gentlemen Miss Tims made a token resistance because she was afraid. She knew that she had

consented to intercourse on her first date when she shouldn't have, and she was afraid that if she consented too quickly once again, or without some show of resistance, Mr. Gavin might think her cheap. He might think that she was willing to jump into bed just as quickly with any man who happened to come along. As Miss Tims herself testified, she cared about Mr. Gavin. She wanted him to like her and to go on seeing her. For this reason she also wanted him to respect her, to not think of her as cheap or easy. To achieve this end she employed a stratagem that is as old as the history of sex itself. She pretended to resist while at the same time trying to make it clear that she wasn't really resisting.

Why did Miss Tims call the police and accuse Mr. Gavin of sexual assault after Mr. Gavin had left her apartment? Why did she ask him to please leave her apartment? Members of the jury, when Mr. Gavin stopped his advances Miss Tims was terribly afraid that he would not see her again. She was frightened that perhaps she should not have protested so strongly. She thought that he only saw her as cheap or easy and that he didn't really care about her. It appears that what she was really hoping was that Mr. Gavin wouldn't stop when she asked him to. That he would sweep her in his arms and tell her that everything was OK, that he still cared about her, that he wanted to continue their relationship. That she hadn't been bad or cheap for sleeping with him. But Mr. Gavin was unaware of what Miss Tims was actually thinking. He did want to see her again, and never thought that Miss Tims was cheap, so he was unable to fathom why she was distressed. However, not wanting to make her more upset he politely left her apartment when she asked him to. Once he was gone Miss Tims' worst fears were confirmed. She believed she had lost Mr. Gavin because she had been cheap and had given in too easily on their first date. The fact that he did not pursue her beyond her token protests proved that he didn't care. She brooded about this for some time, and eventually, came to convince herself that Mr. Gavin had raped her as a way of protecting herself against the thought that she had been so cheap and easy that she had lost a potentially important relationship. She schemed for revenge against a man whom she thought had taken advantage of her.

Members of the jury, if Miss Tims had really believed that she had been raped she would have called the police immediately after Mr. Gavin left her apartment. However, she waited at least a half hour before calling the police. Why? Because she knew that no rape had occurred, and because it required a half hour of brooding and rationalization for her to cope with the fact that she had destroyed her relationship with Mr. Gavin by developing the belief that what had happened was somehow his fault.

Members of the jury this is a tragic case in which two people have been hurt. I do not believe that Miss Tims is a bad person. She is, however, hurt, confused and disturbed, and the charge that she has brought against my client is completely unjustified. Ladies and gentlemen, my client is an innocent man caught in an unfortunate situation that was not of his own making. He is an intelligent, hard working university student working on his Master's degree. He has never been in trouble with the police, and no other woman has ever filed a sexual complaint against him. Obviously, my client is not a rapist. He is simply a man who has become the

Members of the jury the theory of the defense, that Miss Tims concocted this whole rape scenario, is obviously nonsense. That she felt betrayed I have no doubt. She liked and trusted this man and he betrayed this trust by raping her and afterwards denying even having sex with her. There is little doubt that he did in fact rape her. Could any sane man actually believe that a struggling, hysterical woman who was pushing at him and hitting him and pleading for him to stop, was really asking for sex? Could any sane man really believe that he would have to wedge his knee between a woman's tightly pressed legs to get them apart if she really wanted to have sex with him? Of course not. Mr. Gavin is an intelligent man. He obviously knew that Miss Tims was terrified, and that she wanted him to stop his advances. Despite that knowledge he ignored her protests and sexually assaulted her in order to selfishly satisfy his own sexual impulses.

Why didn't Miss Tims gouge out Mr. Gavin's eye, or rip at his testicles with her free hand, or bite off his ear? Members of the jury try for a moment to place yourself in Miss Tims' position. She is with a man she likes and thinks she can trust. To her horror she realizes that her trust has been misplaced. Suddenly she has lost control of the situation. The man she trusted is sexually assaulting her. She feels overwhelmed by terror. She feels overpowered and violated. In her terror and anguish she reacts instinctively. She tries to pull away, she pleads and cries, she tries to flay at her attacker with her free hand, but nothing works. If Miss Tims had been trained in Karate, and if she had remained calm she might have thought to gouge out her attacker's eye or bite off his ear, or grab him by the testicles. But Miss Tims is not a Karate expert. She has no training in self defence, and, like most other women in our society, she had never before been in a physical fight. The theory of the defense that Miss Tims was not assaulted because she didn't fight well enough to hurt her attacker or leave any marks is a viscous and sexist attempt to blame the victim instead of the criminal. Miss Tims should never have had to fight at all. She has a right to limit what is done to her body, and she should not have to defend that right, or prove that she really meant no when she said no. Members of the jury the defence has no real case. It is obvious that Miss Tims was sexually assaulted by Mr. Gavin. However, rather than admit the obvious the defense has twisted the issue by attempting to put Miss Tims on trial. But Miss Tims did not break any law. She did absolutely nothing wrong. All Miss Tims did was insist that her body is her own and does not belong to a man just because he buys her dinner or because she allows him to kiss her or because she had consented to sex with him on a previous occasion.

The defense has used as evidence that Miss Tims did not have intercourse because there was no tearing of her vagina. This argument is specious. As Doctor Barlow testified sexual assault does not always produce tearing of the vagina. Dr. Barlow pointed out that tearing tends to occur when the vagina is not lubricated and that vaginal lubrication is usually caused by sexual arousal. Keep in mind, members of the jury that Miss Tims had become sexually aroused while kissing Mr. Gavin on the couch. Later, when Mr. Gavin attacked her, her arousal turned to terror. Nevertheless, her vagina may have still been lubricated enough to prevent vaginal tearing. Does this mean that Miss Tims was not really assaulted or that she did not

have intercourse? Of course not.

After Mr. Gavin had finished his sexual assault he found that Miss Tims was crying and hysterical. Both the police officer that answered Miss Tims' call and the Doctor who examined her at the hospital testified that Miss Tims had been crying, that she was frightened and shaking and terrified to be left alone. Does this sound like the description of someone who had been left alone after a small petting session, or does it sound like a terrified woman who had just been through a horrible experience? Obviously this is a description of a terrified woman who has just lived through a sexual assault. How does the defense deal with this evidence? It creates a truly bizarre fantasy out of thin air. On the basis of no evidence whatsoever, the defense assumes that Miss Tims was upset because she was afraid that Mr. Gavin no longer cared for her and would leave her. Members of the jury this theory is completely absurd. It was invented to try and deflect attention from the obvious fact that Miss Tims was profoundly disturbed after her sexual assault. The defence wants you to ignore the fact that a woman who wanted her partner's advances to stop and that her wishes were complied with would not be upset. Such a woman would not accuse the man who did what she really wanted of sexual assault.

The defence has argued that Miss Tims waited a half hour before calling the police because it took her that long to convince herself that she had been assaulted. Members of the jury, this too is nonsense. Miss Tims knew immediately that she was being sexually assaulted. That is why she struggled to free herself and why she became terrified when she realized that she was helpless. After the assault ended and Mr. Gavin left the apartment Miss Tims rushed to lock the door so that he could not come back. She then collapsed terrified, dazed and stunned onto her living room floor and sobbed uncontrollably. It took her a half an hour before she could gain enough composure to call the police and tell a coherent story.

Members of the jury the evidence in this case is clear and compelling. It indicates beyond a reasonable doubt that Mr. Gavin sexually assaulted Miss Tims. There is no ambiguity here. The facts are clear. They speak for themselves and they indicate beyond any reasonable doubt that Mr. James Gavin sexually assaulted Janet Tims. For this reason I ask you to find Mr. Gavin Guilty of sexual assault. Thank you for your patience and for your attention.

JUDGE'S CHARGE

Ladies and gentlemen of the jury, you have heard the evidence in this case and you must now follow the law as I will present it to you and deliberate to a unanimous verdict. Mr. James Gavin has been charged with sexual assault upon the person of Miss Janet Tims. Now, sexual assault is defined in Section 244 of the Criminal Code as follows: A person commits an assault when (a) without the consent of another person, he applies force intentionally to the other person, directly or indirectly; (b) he attempts or threatens, by an act or gesture, to apply force to another person, if he has, or causes that other person to believe upon reasonable grounds that he has, the present

ability to effect his purpose. This section of the criminal code applies to all forms of assault, including sexual assault.

Everyone who commits a sexual assault is guilty of an indictable offence and is liable to imprisonment for ten years. For the purposes of this section of the Criminal Code no consent is obtained when the complainant submits or does not resist by reason of (a) The application of force to the complainant or to a person other than the complainant; (b) Threats or fear of the application of force to the complainant or to a person other than the complainant.

Ladies and gentlemen of the jury it is the contention of the prosecution that Mr. James Gavin sexually assaulted Miss Janet Tims. You have heard Miss Tims testify under oath that she was forced against her will to submit to sexual intercourse with Mr. Gavin. You have heard the testimony of other witnesses called by the prosecution to corroborate Miss Tims' testimony. These witnesses confirmed that, on the night in question Miss Tims had been with Mr. Gavin. In addition, both the police officer who answered Miss Tims' call and the Doctor who later examined her at the hospital testified that she reported to them that she had been sexually assaulted. These witnesses further testified that Miss Tims was frightened, upset and crying and that she accused Mr. James Gavin of being her assailant.

Members of the jury, sexual assault means non-consensual sexual relations. Sexual intercourse that was consented to voluntarily by both parties does not constitute sexual assault. A person who voluntarily engages in sexual intercourse but who at a later time regrets having done so has not been sexually assaulted because the act of having sexual intercourse despite any later regrets was itself a non-coerced and voluntary action. A person who consents to one type of sexual activity does not automatically or necessarily consent to all sexual activity. For example, a person who consents to a kiss has not necessarily consented to sexual intercourse. Similarly, the fact that a person consented to sexual intercourse with a person on one occasion does not necessarily mean that they have consented to have intercourse with that person on other occasions. The person who continues to force sexual activities on a person who has communicated that such activity is not consensual, commits a sexual assault.

Members of the jury you heard the Defense contend that Miss Tims was not sexually assaulted by Mr. Gavin but instead that Mr. Gavin had complied with her wishes to stop and had left her apartment. According to the theory presented by the Defense the behavior of Miss Tims towards Mr. Gavin both on their earlier date and on the night in question implied the desire for a continued and serious relationship with Mr. Gavin. The Defense theory further holds that once they were seated together on the couch in Miss Tims' apartment, Miss Tims' behavior confirmed her willingness to be with Mr. Gavin. The Defense challenges that sexual intercourse occurred between Mr. Gavin and Miss Tims, but it does not challenge that during the period of increasing intimacy and mutual sexual arousal on the couch that Miss Tims protested against Mr. Gavin's increasingly intimate sexual advances. The Defense contends that Miss Tims' protests were taken to heart by Mr. Gavin, but were not genuine. Instead, they were token gestures that were misunderstood by Mr. Gavin and that she consented to his advances despite superficial protests to the contrary. Finally

the Defense contends that Miss Tims' distress following Mr. Gavin's stopping his advances did not reflect the distress of having been sexually assaulted but, instead, reflected the distress of knowing that she had lost her relationship with Mr. Gavin.

Members of the jury, in your deliberations it is important that you review very carefully all of the evidence that has been presented. You should think carefully about the testimony you have heard, and, where there was conflicting testimony you must make judgments about the credibility of the witnesses involved. Not everything said under oath in a court of law is necessarily the complete truth. People are often swayed by various personal motivations to present their evidence in a way that is favorable to the outcome they favour.

It is up to you to use your intelligence and your common sense when evaluating the evidence and when reaching your conclusions. If after careful deliberation you conclude that the evidence presented before you proves beyond a reasonable doubt that Mr. Gavin assaulted Miss Tims, then you should follow the law as I have described it to you and find Mr. Gavin guilty of sexual assault. In other words, if you find beyond a reasonable doubt that Mr. Gavin forced Miss Tims to engage unwillingly in sexual intercourse, and that such force occurred after Miss Tims had clearly communicated to Mr. Gavin by word or by deed that she did not consent to the intercourse, then you should find Mr. Gavin guilty as charged. On the other hand, if after careful evaluation of the evidence you believe that a reasonable doubt remains concerning Mr. Gavin's guilt, then you should find him not guilty of the charges against him.

Now a reasonable doubt concerning guilt is not merely the possibility of innocence. A reasonable doubt is a doubt that would cause a reasonable and prudent person in the graver and more important affairs of life to pause and to hesitate to act upon the truth of the matter charged. Proof beyond a reasonable doubt is not proof beyond all possible or imaginary doubt. Instead, it is proof that precludes every reasonable hypothesis except the hypothesis that it tends to support. Proof beyond a reasonable doubt is proof to a moral certainty. Proof beyond a reasonable doubt is proof strong enough to convince reasonable people who have examined the evidence before them that the crime that the defendant is charged with has been committed by the defendant. Proof beyond a reasonable doubt is proof that convinces reasonable people that no other reasonable conclusion is possible. Members of the jury you may now retire and begin your deliberations.

APPENDIX I

Nullification Instructions

Members of the Jury, before you retire to begin your deliberations it is imperative that you understand that you constitute a public body and as such that you are bound to give respectful attention to the law as I have defined it for you. Nevertheless, it is equally important that you understand that you, the Jury, have the final authority to decide whether or not to apply a given law to the acts of the defendant who is on trial here before you. More explicitly, it is important that you understand that you, the Jury, represent your community, and that it is appropriate to bring into your deliberations the feelings of the community and your own feelings based on conscience. Finally, it is imperative for you to understand that, despite your respect for the law, nothing bars you from acquitting the defendant if you feel that application of the law to the specific case before you would produce an inequitable or unjust result.

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